



REFERENCE INTERCONNECT OFFER 6

Legal Framework

October 1, 2013

THIS AGREEMENT is made this [] day of []

BETWEEN

- A) [Telco], a company organised and existing under the laws of Jamaica, having its registered office at [legal address] (the “Telco”); and
- B) Cable & Wireless Jamaica Limited, trading as LIME a limited liability company duly incorporated and existing under the laws of Jamaica, having its registered office at 2-6 Carlton Crescent, Kingston 10, Jamaica (“LIME”).

RECITALS

- A) The Minister has granted the Telco licences to own and operate certain facilities in Jamaica and to provide certain telecommunications services to the public;
- B) The Minister has granted LIME licences to own and operate certain facilities in Jamaica and to provide certain telecommunications services to the public;
- B) Under such licences, and pursuant to the provisions of the Telecommunications Act, the Telco is entitled to connect its public network to and with LIME and LIME is entitled to connect its public voice network to and with the Telco in accordance with Sections 27 - 37 of the Telecommunications Act.
- C) Pursuant to Sections 27 - 37 of the Telecommunications Act, LIME agrees to allow the Telco to interconnect to and with LIME upon the terms and conditions contained in this Agreement.

1. **Definitions and Applicability**

- 1.1 In this Agreement, unless the context otherwise requires or explicitly states, the terms used shall have the meanings assigned to them in the Definitions schedule.
- 1.2 In this Agreement, unless the context otherwise requires or explicitly states:
 - a) The singular includes the plural and vice versa;
 - b) Reference to an agreement or other instrument includes any variation or replacement to or of either of them;
 - c) Reference to any Clause, Schedule, Annex or other Attachment is a reference to a clause of or schedule, annex or attachment to this Agreement and any reference to this Agreement includes any such Schedule, Annex or other Attachment. Reference to any Paragraph is a reference to a paragraph of a Schedule, Annex or Attachment.
 - d) Reference to any statute, ordinance, code or other law includes regulations and other instruments under it and any consolidations, amendments, re-enactments or replacements thereof at any time;

- e) The expression “person” includes any individual, firm or company;
 - f) All references to J\$ or other payable amounts refer to Jamaica Dollars unless otherwise stated; and
 - g) If a day on which payment of money falls due is not a Business Day, the due day for such payment shall be deemed to be the next following Business Day.
- 1.3 References in this Agreement to either Party shall include any legitimate successors or assignees of that Party pursuant to Clause 34.
- 1.4 Headings are included for convenience and do not affect the interpretation of this Agreement.
- 1.5 In the event of any inconsistency between the numbered Clauses of this Legal Framework and the Schedules, Annexes or other Attachments, the numbered Clauses of this Legal Framework shall prevail. In any other event the following order of priority will apply:
- a) Definitions
 - b) Service Descriptions
 - c) Tariff Schedule
 - d) Joint Working Manual
 - e) Service Schedule and
 - f) Parameter Schedule

2. **Duration**

- 2.1 This Agreement takes effect on the date of signature and, subject to Clause 28, continues in full force and effect unless terminated in accordance with Clause 24 or otherwise varied in accordance with the provisions of Clause 23. In the event of any variation pursuant to Clause 23, the Agreement as amended shall continue in full force and effect unless terminated in accordance with Clause 24 or further otherwise varied in accordance with the provisions of Clause 23.

3. **Interconnection**

- 3.1 Subject to Clause 28, LIME shall connect and keep connected the LIME System to the Telco System and the Telco shall connect and keep connected the Telco System to the LIME System in the manner described in this Agreement in order to convey Calls to, from or in transit over their respective System.
- 3.2 Subject to Clause 15, Points of Connection shall be established at or near the Interconnect Switch Locations or Virtual Interconnect Switch Locations specified in the Service Schedule in accordance with the Footway Box Joining Service, the Non-

Footway Box Joining Service or the Small Capacity Joining Service as the case may be as more particularly described in the Service Descriptions.

- 3.3 Each Party shall ensure that its equipment and facilities at each relevant Interconnection Switch Location or Virtual Interconnect Switch Location conform to the technical requirements set out in the Joint Working Manual.

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

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

- 4.2 The Parties will order and provision capacity in accordance with the procedures set out in the Joint Working Manual and comply with all applicable provisions of the Joint Working Manual relating to ordering and provisioning.

5. **Testing**

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

6. **Operation and Maintenance**

- 6.1 Subject to Clause 6.2, each Party shall be responsible for planning, providing, operating and maintaining all equipment and facilities located on its side of the interface at the Point of Connection.

- 6.2 In the case of the Non-Footway Box Joining Service and Small Capacity Joining Service (if applicable), LIME shall be responsible for planning and providing those aspects of the Service specifically described in the Non-Footway Box Joining Service Service Description or Small Capacity Joining Service Service Description which are on the Service Taker's side of the interface at the Point of Connection subject to Clause 9.1.

- 6.3 Each Party shall manage traffic on its System so as to avoid disruption to the other Party's System to the maximum extent reasonably practicable and each Party shall take all necessary steps as are reasonably practicable to minimise service failures and congestion and signalling system disturbances within its own System which would affect the ability of the other Party to carry Calls across such other Party's System in accordance with the routing principles set out in the Joint Working Manual and the Parameter Schedule.

- 6.4 Each Party shall advise the other Party of any Faults or planned maintenance in accordance with the procedures set out in the Joint Working Manual and shall resolve the Faults or conduct the maintenance in accordance with the Joint Working Manual.

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

7. System Changes

7.1 Each Party shall notify the other Party of developments within its System that may impact on the routing and forecasting of traffic promptly upon finalisation of a decision to make such changes.

7.2 Neither Party shall make or permit to be made any alteration, adjustment or addition to its System in such a way as to materially impair the operation of the other Party's System or otherwise to materially affect the conveyance of Calls over a Point of Connection unless the Party provides reasonable prior written notice to enable the other Party to make modifications to its own System which are necessary to maintain interconnection at the agreed standards. Each Party shall take appropriate and reasonable steps to minimise the impact on the other Party of such alteration, adjustment or addition (including the costs).

7.3 In the event that at any time either Party proposes to change any standards or implement additional standards or standards with different features which may affect the operation of the other Party's System, the Party shall so notify the other Party as soon as practicable and in any event at least six months in advance, so that the other Party has a reasonable opportunity to attempt to meet such standards or adjust its System accordingly. Each Party shall take appropriate and reasonable steps to minimise the impact on the other Party of such alteration, adjustment or addition (including the costs).

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

7.5 The applicable standards of operation of each Party's System for the purpose of the Services will be those specified in the Joint Working Manual and, in the absence of any specified standards, will be such applicable international standards as the Parties may agree.

8. Telecommunication Services

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

shall be provided in accordance with the Service Descriptions and the Joint Working Manual.

- 8.2 For the avoidance of doubt, and notwithstanding the interconnection of the Parties' Systems, neither Party shall hand over to the other Party, nor have an obligation to convey Calls or continue to convey Calls of any category, unless there is express provision to convey Calls of that category in a Service Schedule. In the event that such Calls not expressly provided for are handed over and accepted for conveyance, the following charges will be applied: (i) where the Call is of a type described in a Service Description, the charges for that Service as set out in the Tariff Schedule, (ii) where the Call is of a type not described in a Service Description but of a type available in another price list issued by the Party receiving the Call, then the charges as set out in that price list should be used, or (iii) if no such tariff exists, such amount as is reasonable having regard to all the circumstances shall be made. Where agreement cannot be reached between the Parties on what is a reasonable tariff for the service, the matter should be submitted to the Office for a determination.
- 8.3 Each Party shall be solely responsible for the switching and routing of all telecommunication services on its System and shall not be liable for telecommunications services provided by a Third Party Telecoms Provider. Such switching and routing shall be consistent with the principles in the Joint Working Manual.

9. **Charges and Payment**

- 9.1 Each Party shall pay to the other the relevant Charges applicable to each Service as more particularly described in the Service Descriptions and tarified in the Tariffs Schedule.
- 9.2 Unless otherwise agreed between the Parties, Charges payable by LIME to the Telco for a Service shall be the same as the Charges payable by the Telco to LIME for the same Service where the networks are the same. In the case where this reciprocity applies, in the event that LIME's Charges for a Service are varied pursuant to Clause 10, the Telco will vary its Charges for the same Service to ensure they remain the same. For the avoidance of doubt, networks shall be considered to be the same where there is interconnection between a fixed network and another fixed network, irrespective of whether the underlying technology for the two networks is the same.
- 9.3 Payments shall be made in an agreed form and will be deemed made on the date of receipt of such payments in cleared funds.
- 9.4 Subject to Clause 9.6, all Charges payable under this Agreement shall be payable within 30 days of deemed receipt of an invoice. In the event that either Party shall fail to pay any amount due hereunder within such 30 day period, the payee shall be entitled to charge and receive interest at the base lending rate of the Bank of Nova Scotia from time to time in force plus 2%, from and including the day following the due date for payment until the date of payment in full, and whether before or after any court judgement or other award.

- 9.5 In the event that either Party disputes in good faith the specific amount of any invoice delivered by the other Party under this Agreement the Parties shall resolve the dispute in accordance with the investigation and determination procedures set out in the Joint Working Manual. Notwithstanding any dispute as to any payment, the Parties shall remain obliged to continue to observe and perform the provisions of this Agreement.
- 9.6 Notwithstanding the reference of any dispute for investigation and determination under this Agreement, if the amount in dispute represents less than five *per cent* (5%) of the total amount of the invoice (excluding any value added or other applicable tax), the invoiced amount shall, for the purposes of Clause 9.4 be deemed payable in full. If the amount in dispute represents 5% or more of the total amount of the invoice (excluding any value added or other applicable tax), the amount in dispute shall, for the purposes of Clause 9.4, be deemed not payable pending resolution of the dispute under Clause 9.5. Nothing in this Clause shall be taken as permitting a Party to withhold payment of an amount that is not in dispute.
- 9.7 Where appropriate, any value added or other applicable tax shall be added to all or any part of the Charges under this Agreement, and shall be paid by the Party responsible for making such payment.
- 9.8 If either Party agrees that the other Party may pay any applicable One-off Charges in instalments, these Charges will be payable subject to such reasonable terms and conditions as are stipulated by the Party to which the payments are to be made.
10. **Variation of Charges**
- 10.1 The Telco or LIME may from time to time, and subject to the existing law and regulations governing telecommunications in Jamaica, give notice of any changes to the Usage Charges. Any such notice shall specify the proposed new Usage Charges (being an amount which does not exceed the maximum termination rates determined by the existing law and regulations governing telecommunications in Jamaica) and the date on which it is proposed that the variation to the Charges is to become effective, such date being at least 5 weeks from the date the notice is deemed to be received. The Telco or LIME shall, within 5 Business Days of receipt of such notice, acknowledge receipt and within ten working days indicate written acceptance of the proposed variation or of its intention to dispute the charge. Any dispute as to the changes which may be made to the Usage Charges pursuant to this Clause 10.1 will be transferred to the OUR for resolution in accordance with Section 34 of the Act.
- 10.2 The Telco or LIME may from time to time provide notice of changes to Charges, being
- (i) Charges approved by the OUR; or
 - (ii) Charges determined by a decision of the court or by arbitrators appointed subject to clause 36; or

- (iii) Charges changed as a result of changes made by Third Party Telecoms Providers to their charges or payments.

Such notice shall specify the date on which the variation is to become effective. In the case of changes falling within (i) and (ii) above, the changes will take effect from the effective date approved by the OUR, or the effective date as determined by a court of competent jurisdiction or arbitrators appointed subject to clause 36. In the case of changes falling within (iii) above, the changes will take effect from the date set out in the notice as being the effective date, such date being at least 5 weeks from the date such notice is deemed to be received unless LIME or Telco does not receive sufficient notice from the Third Party Telecoms Provider. In the case of changes falling within (iii) above, to the extent that LIME or Telco does not receive sufficient notice from the Third Party Telecoms Provider to give at least 5 weeks' notice of any changes either party will give as much notice as is reasonably practicable.

- 10.3 For the avoidance of doubt, the Charges for new services will be agreed pursuant to Clause 18.
- 10.4 In the event that the Jamaican dollar depreciates or appreciates against the US dollar by five percent or more since the last adjustment of rates, during the Term of this Agreement and pursuant to this clause, either Party reserves the right to vary its charges to reflect such depreciation or appreciation subject to the charges remaining cost reflective. Notwithstanding the foregoing, any such change shall only become effective after approval by the OUR. The OUR will only grant approval where it is satisfied that such an adjustment is justified on the basis of cost movements.

11. **Billing**

- 11.1 Each Party shall be responsible for invoicing its own Subscribers.
- 11.2 Each Party shall be entitled to invoice the other Party for the relevant Usage Charges and Monthly Recurring Charges following the expiration of each Billing Period. Each Party shall use reasonable endeavours to deliver invoices in a timely manner in accordance with the Joint Working Manual.
- 11.3 Subject to Clauses 11.2 and 11.4, each Party shall be entitled to invoice the other Party for applicable One-off Charges and any other amounts expressed as being payable in accordance with the specific provisions of this Agreement.
- 11.4 Invoicing for a Joining Service shall be carried out in accordance with the relevant Service Description and all reasonable endeavours shall be used to ensure that all information necessary to produce a complete invoice for such Services is obtained in a timely manner.
- 11.5 Any failure to deliver invoices in accordance with Clause 11.2, 11.3 or 11.4 shall not be deemed to be a waiver of the invoicing Party's rights in respect of payment or a breach of a material obligation of the invoicing Party.

11.6 For the purpose of reconciling accounts, each Party shall use all reasonable endeavours to provide the other with Billing Data in respect of Calls conveyed from its System and handed over to the other Party at a Point of Connection in accordance with the Joint Working Manual.

11.7 Notwithstanding the above, in the event that:

- a) Billing Data is temporarily or permanently unavailable; or
- b) A billing error is discovered that occurred in the previous Billing Period

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

12. **Collocation**

12.1 Except as specifically provided herein, nothing in this Agreement shall be taken as requiring a Party to share facilities or to provide co-location.

13. **CLI**

13.1 The Parties will pass CLI in accordance with the Joint Working Manual and any agreed code of practice for CLI from time to time in force. For the avoidance of doubt and subject to clause 13.2, neither Party is required to pass CLI for any Call in respect of which it is not available.

13.2 No Party shall alter or amend a CLI or permit or accept the alteration or amendment of a CLI unless such alteration or amendment is agreed in advance in writing by both Parties. Without in any way restricting any other breaches of this Agreement being deemed to be material breaches, a breach of this clause 13.2 shall be deemed a material breach of the Agreement.

14. **Numbering**

14.1 Each Party shall make the necessary adjustments to its System to route Calls to the other Party's System in accordance with the number ranges and other numbers assigned to the other Party under the National Numbering Scheme and in accordance with the Service Descriptions and the Service Schedule.

14.2 Each Party shall use numbers in accordance with the National Numbering Scheme.

15. **Service Performance and Standards**

15.1 Subject to Clause 15.3, the Parties shall use best endeavours to comply with the provisions relating to quality of service set out in the Joint Working Manual and the Parameter Schedule.

15.2 Subject to Clause 15.3, the Parties shall use best endeavours to at all times apply standards (including signalling standards) and operating guidelines which are consistent with the Joint Working Manual.

15.3 Save as is set out in Clause 15.1 and 15.2, the Parties provide no other warranties, representations, undertakings or commitments in respect of quality of service including, but not limited to, warranties, representations, undertakings or commitments in respect of difficulties or faults which result in a failure to establish service, in-service interruption or loss of or distortion of communication and all implied warranties are hereby excluded, save those implied by statute.

16. **Safety and System Protection**

16.1 Each Party shall be responsible for the safe operation of its System and shall take all steps reasonably necessary or required by law to ensure that such operation and the implementation of this Agreement:

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

16.2 In the event that it is agreed to be necessary or desirable for representatives of a Party to access the premises of the other Party, each Party shall use its reasonable endeavours to comply with all reasonable security and safety practices and procedures applicable to access to and operations on the premises of the other Party notified to it by the Party whose premises are being visited. Subject to the indemnified Party complying with Clause 27.6 each Party shall indemnify and keep indemnified the other against all risks and damages, costs, claims and expenses arising out of any breach by the indemnifying Party of this Clause 16.2.

16.3 In the event that it is agreed to be necessary or desirable for a Party's equipment or facilities to be located on the premises of the other Party, the Party whose premises the equipment or facilities are located on will provide a secure and suitable environment for the equipment or facilities and shall not in any way adjust, alter, modify or tamper with the same without the consent of the other Party.

17. **Prevention of Fraud**

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

- 17.2 If requested, the Parties shall co-operate in the provision of information to the OUR in relation to fraudulent use, theft or misuse of the Parties' respective Services and associated equipment.
18. **New Services**
- 18.1 Either Party may, at any time, request from the other Party an agreement to interconnect their respective Systems for the provision of any service or facility which (a) in the case of LIME it offers to provide under its current published RIO and (b) in the case of Telco it offers to provide or provides under an interconnection agreement with another public voice carrier in accordance with the Act.
- 18.2 Following a request by the Telco pursuant to Clause 18.1, the parties shall meet to discuss *inter alia* service forecasts, technical requirements and operational issues. When the parties have determined that their Systems are ready for interconnection, they shall enter into an agreement for the provision of the service or facility on the terms set out in LIME's then current RIO. This Agreement shall be amended by the addition of a relevant Service Description, together with a revised Service Schedule and Tariffs Schedule and, if applicable, a revised Parameter Schedule and Joint Working Manual to give effect to the new terms or, if appropriate, the Parties shall agree and enter into a new and additional interconnection agreement.
- 18.3 Following a request by LIME pursuant to Clause 18.1, the Telco shall enter into good faith negotiations with LIME to agree terms for interconnection of the Parties' respective Systems for the provision of the service or facility by the Telco to LIME on fair and reasonable terms. Upon terms being agreed, this Agreement shall be amended by the addition of a relevant Service Description, together with a revised Service Schedule and Tariffs Schedule and, if applicable, a revised Parameter Schedule and Joint Working Manual to give effect to the agreed terms or, if appropriate, the Parties shall agree and enter into a new and additional interconnection agreement.
- 18.4 If a Party requests from the other Party (or LIME Mobile requests from LIME) an agreement for interconnection for the provision of a service or facility which is not made available by such other Party to another public voice carrier (including by LIME to LIME Mobile) and such agreement is one which the other Party is obliged to provide under the Act, the Parties shall enter into good faith negotiations to enter into an agreement for interconnection for the provision of such service or facility. Upon agreement between the parties on the terms for such interconnection, this Agreement may be amended by the addition of a relevant Service Description, together with a revised Service Schedule and Tariffs Schedule and, if applicable, a revised Parameter Schedule and Joint Working Manual to give effect to the new terms or, if appropriate, the Parties shall agree and enter into a new interconnection agreement. Nothing in this clause shall require either Party to make a new service available if it is not required by the Act
- 18.5 In the event that LIME develops a new service falling within Clause 18.4, LIME will announce that the service will be available to all interconnecting parties

pursuant to Clause 18.2 or 18.3 promptly following the time the deployment decision is made.

19. Confidentiality

- 19.1 Subject to the following provisions of this Clause 19, a Receiving Party shall keep in confidence Confidential Information and will not (and will use its best endeavours to ensure that its directors, employees, agents, representatives, affiliates and professional advisers will not) disclose such information to any third party.
- 19.2 A Receiving Party shall exercise no lesser security or degree of care over Confidential Information than that Party applies to its own Confidential Information and in any event such security or degree of care shall be no less than would be exercised by a reasonable person with knowledge of the confidential nature of the information.
- 19.3 A Receiving Party shall restrict disclosure of Confidential Information relating to the other Party to those who have a reasonable need to know. Confidential Information shall be used solely for the purposes for which it was disclosed.
- 19.4 A Receiving Party may disclose Confidential Information to a contractor or agent, subject to the contractor or agent having a reasonable need to know and undertaking to comply with obligations equivalent to those contained in this Clause 19.
- 19.5 A Receiving Party may disclose Confidential Information to an Associated Company, subject to the Associated Company having a reasonable need to know and undertaking to comply with obligations equivalent to those contained in this Clause 19.
- 19.6 Unless otherwise agreed in writing, a Receiving Party shall not use the other Party's Confidential Information to provide commercial advantage and shall not for any reason share Confidential Information from the other Party with its Customer Facing Divisions. Without in any way restricting any other breaches of this Agreement being deemed to be material breaches, and subject to clause 24.2, a breach of Clause 19.6 shall be deemed a material breach of the Agreement.
- 19.7 All Confidential Information is acknowledged by the Receiving Party to be the property of the Disclosing Party and the disclosure of the Confidential Information shall not be deemed to confer any rights to that Confidential Information on the Receiving Party.
- 19.8 The Disclosing Party may request in writing at any time that any written Confidential Information (and/or Confidential Information in machine readable form) disclosed pursuant to the terms and conditions of this Clause 19 and any copies thereof be returned with a written statement to the effect that upon such return the Receiving Party has not knowingly retained in its possession or under its control, either directly or indirectly, any Confidential Information or copies thereof and the Receiving Party shall comply with any such request within seven (7) days of receipt of such request.

20. Use of DQ Information

20.1 Information on the Telco's Subscribers passed to LIME in order to keep the National Directory Database up to date will not be used by LIME to the commercial advantage of its Customer Facing Divisions.

21. Intellectual Property Rights

21.1 Where any Intellectual Property (herein referred to as IPR) is developed in connection with performance of this Agreement then, in the absence of any other Agreement between the Parties, the owner of the IPR shall remain the Party who developed the IPR. Each Party grants to the other a non-exclusive, royalty free licence to use any IPR for the purposes of this Agreement and for its term subject to the other provisions in this Clause 21.

21.2 Each Party ("the IP Indemnifying Party") agrees to indemnify the other Party ("the IP Indemnified Party") against all liability or loss arising from, and all reasonable costs, charges and expenses incurred in connection with, any claim, action, suit or demand alleging infringement by the IP Indemnified Party of the rights in Jamaica of a third person arising from the use by the IP Indemnified Party of IPR disclosed or licensed by the IP Indemnifying Party under this Agreement except where such IPR has been modified or used other than in accordance with this Agreement subject to the IP Indemnified Party complying with Clause 27.6.

21.3 If a Party becomes aware of an infringement or threatened infringement of IPR belonging to the other Party ("the IP Owner") disclosed or licensed by the IP Owner under this Agreement, then that Party shall promptly notify the IP Owner of all the relevant details relating to the infringement, or threatened infringement.

21.4 The IP Owner may take such steps and proceedings as it considers necessary or desirable to protect its rights in respect of the IPR, and any rights of the other Party in the IPR, and the other Party must render all reasonable assistance to the IP Owner in this regard at the IP Owner's expense.

21.5 If a Party ("the Infringing Party") licenses IPR to the other Party for the purposes of this Agreement and that IPR infringes the rights of a third Party, then the Infringing Party must:

- a) at its own expense take such steps as are necessary to cure the infringement, or
- b) if a) is unreasonable having regard to the likely costs and other relevant matters, provide alternative technology as soon as reasonably practicable.

21.6 The Parties acknowledge that this Clause sets out the only remedies and forms for compensation available in respect of any infringement of third Party rights by IPR licensed for the purpose of this Agreement.

21.7 A Party must not use a trademark belonging to another Party without the prior written consent of that other Party.

22. Authorised Representatives

- 22.1 Each Party shall appoint the representatives referred to in the Joint Working Manual to be responsible for the matters indicated in the Joint Working Manual. Each Party shall notify the other of the identity of the representative(s) in writing no later than 5 Business Days following signature of this Agreement.
- 22.2 Except as otherwise provided herein, all correspondence, meetings and other communications (including notification of matters in dispute) pertaining to issues pertaining to their responsibilities shall be directed to and conducted by and through those representative(s). The representative(s) shall keep an appropriate record of all communication with their counterpart(s).
- 22.3 Each party is entitled to change the representative(s) by notice in writing to the other Party.

23. Review and Amendment

- 23.1 Without prejudice to the provisions of Clause 10, either Party may seek to amend this Agreement by serving on the other a review notice if:
- a) a material change occurs in the law or regulations governing telecommunications in Jamaica (including, without limitation, licence changes and court decisions that necessitate the amendment of this Agreement);
 - b) a material change occurs (including, without limitation, enforcement action by any regulatory authority and changes to the company constitution of the Parties) which affects or reasonably could be expected to affect the commercial or technical basis of this Agreement;
 - c) a revised RIO submitted by LIME is approved in whole or in part by the OUR;
 - d) the OUR exercises its powers under Section 29 and Section 34; or
 - e) both Parties agree in writing that there should be a review.
- 23.2 A review notice shall set out in reasonable detail the events giving rise to the review required by the notice and the nature of the amendments sought by the Party serving the notice.
- 23.3 With the exception of reviews arising under Clause 23.1 (e), a Party must serve a review notice within 3 months of the event giving rise to the review.
- 23.4 On service of a review notice, the Parties shall forthwith negotiate the matters to be resolved with a view to agreeing the relevant amendments to this Agreement provided that if the event giving rise to the review is as specified in either Clause 23.1 (c) or Clause 23.1 (d), this Agreement shall be modified accordingly by the Parties without the need for renegotiation. If nevertheless the Parties shall disagree on the nature or extent of the modification(s) required in any such case, they shall resolve the dispute in the manner provided in Clause 23.6.

- 23.5 If the event giving rise to the review is approval in whole or in part of a revised RIO submitted by LIME, the Parties agree that the relevant amendments will include amendments to reflect the principles in the approved RIO, to the extent those amendments were indicated as mandatory by the OUR. The Telco may choose to incorporate those non-tariff determinations not stipulated to be mandatory, in the interconnection agreements with LIME.
- 23.6 If, after a period of sixty 60 days from commencement of such review, the Parties fail to reach Agreement, the Parties shall resolve the dispute in accordance with the dispute resolution procedure adopted pursuant to Section 34 of the Act.
- 23.7 For the avoidance of doubt, the Parties agree that the terms and conditions for this Agreement shall remain in full force and effect during such review until the Parties complete an agreement replacing or amending this Agreement or until such time as this Agreement is terminated in accordance with its terms.

24. **Termination**

24.1 Either Party may terminate this Agreement:

- a) by at least nine months notice in writing to the other Party; or
- b) immediately on notice in writing to the other Party, in the event that any Carrier Licence and/or Service Provider Licence and/or Spectrum Licence and/or any other licence necessary to entitle a Party to interconnection or to enable a Party to carry out its obligations under this Agreement at any time expires or is revoked by the Minister and is not immediately replaced or re-issued or in the process of being replaced or re-issued.

24.2 Either Party may terminate this Agreement by notice in writing to the other (“the Defaulting Party”) if the Defaulting Party:

- a) fails to pay any undisputed invoice or payable undisputed portion of an invoice when due and has failed to remedy such non-payment within 15 days of receipt of a notice from the billing Party that the Agreement will be terminated for non-payment;
- b) is in breach of any other material obligation contained in this Agreement, and has not remedied that breach within 15 days after receipt of a written notice from the non-defaulting Party specifying the breach and requiring it to be remedied;
- c) is engaged in acts or omissions which impair the integrity of the other Party’s System and has failed to remedy such impairment within 5 days of receiving written notice from the other Party of such impairment; or
- d) ceases or threatens to cease to carry on business, enters into liquidation (other than for the purpose of merger or reconstruction where the emergent company

assumes its obligations hereunder) or is dissolved or becomes bankrupt or insolvent or takes or suffers any similar action in consequence of debt.

24.3 Without prejudice to Clause 24.2, in the event that a Party fails to pay all or part of an invoice as set out in Clause 24.2(a) above, the billing Party may, from the date upon which invoice payment is due, in its sole discretion, suspend the provision of any or all services to the Defaulting Party under this Agreement, until such time as the undisputed invoice or payable undisputed portion of an invoice is paid in full by the Defaulting Party.

24.4 In the event that Telco fails to keep in place a valid guarantee or security deposit as required pursuant to Clause 28, LIME will notify the Telco in writing of the breach and allow it a period of seven (7) days within which to become compliant. If the Telco remains non-compliant at the end of the notice period, LIME reserves the right to terminate this Agreement.

25. **Effects of Termination**

25.1 Termination on expiry of this Agreement shall be without prejudice to the rights and obligations of the Parties accruing prior to such termination and such termination shall not affect the continuance in force of any provision of this Agreement which is expressly or by implication intended to continue in force (including but not limited to Clauses 1, 9, 11, 19, 21, 25 and 27 and Paragraph 2.4.2.6 of the Joint Working Manual).

25.2 Termination or expiry of this Agreement shall not operate as a waiver of any breach by a Party of this Agreement and shall be without prejudice to any rights, liabilities or obligations of either Party which have accrued up to the date of termination.

26. **Force Majeure**

26.1 Neither Party shall be liable to the other for any delay or failure to perform or observe any provision of this Agreement by reason of Force Majeure.

26.2 The Party affected by any Force Majeure shall promptly notify the other of the estimated extent and duration of its inability to perform its obligations under this Agreement. Upon cessation of the delay or failure resulting from Force Majeure, the Party affected shall promptly notify the other of such cessation.

26.3 If, as a result of Force Majeure, performance by either Party of its obligations under this Agreement is only partially affected, that Party shall nevertheless remain liable for the performance of those obligations not affected by Force Majeure.

26.4 If the Force Majeure lasts for six months or less from the date of any notification under Clause 26.2, any obligation outstanding shall be fulfilled by the Party affected as soon as possible after cessation of the Force Majeure, save to the extent that such fulfilment is no longer practically possible or is not required by the other Party.

26.5 If the Force Majeure lasts for more than six months from the date of any such notification and notice of cessation has not been given and such Force Majeure prevents the affected Party from performing its obligations in whole or in part during that period, the unaffected Party shall be entitled (but not obliged) to terminate this Agreement by giving not less than 30 days written notice to the other after expiry of such six month period, unless notice of cessation of the Force Majeure is received by the unaffected Party prior to the expiry of such 30 days notice. If this Agreement is not so terminated under the provisions of this Clause 26, any obligations outstanding shall be fulfilled by the Party affected by the Force Majeure as soon as possible after the Force Majeure has ended, save to the extent that such fulfilment is no longer possible or is not required by the other Party.

27. **Liability**

27.1 Neither Party shall be liable to the other in respect of any action, claim, suit or demand brought or made against the other by any third person pursuant to a contractual relationship with that other Party, where and to the extent that liability resulting in any such proceeding was or ought reasonably to have been excluded or limited by such other Party.

27.2 Notwithstanding any other provision of this Agreement, neither Party shall be liable to the other for indirect, purely economic, special or consequential loss or damage, foreseeable or not, arising from its performance or non-performance of its obligations under this Agreement, including through negligence to the extent permitted by law, unless caused by wilful acts or omissions.

27.3 In addition to the other limitations contained in this Clause 27, the liability of each Party to the other in contract and for negligence, and otherwise in respect of its performance under this Agreement shall be limited, to the extent permitted by law, to US\$1 million for any one incident or series of events arising from a single incident and to US\$2 million for all events (connected or unconnected) in any period of 12 calendar months.

27.4 Nothing in this Agreement shall exclude or limit the liability of one Party to the other arising out of that Party's fraud or fraudulent misrepresentation or wilful acts or omissions.

27.5 Subject to Clause 27.6, each Party ("the Indemnifying Party") shall indemnify the other ("the Indemnified Party") against all liability or loss arising directly from, and any reasonable cost, charge or expense incurred in connection with:

- a) damage to or loss of any equipment, facility or other property of the Indemnified Party caused by the negligence or wilful acts or omissions of the Indemnifying Party or its employees, directors, representatives or agents arising out of or in connection with this Agreement; and
- b) an action, claim, suit or demand by any person against the Indemnified Party in respect of or arising out of any negligence or wilful acts or omissions of the

Indemnifying Party in the course of providing services to the Indemnified Party.

- 27.6 If any action, claim, suit or demand (“claim”) is made by any person against the Indemnified Party which, if satisfied or paid by the Indemnified Party, would result in liability by the Indemnifying Party under the indemnity set out in Clause 27.5 or other clauses of this Agreement:
- a) the Indemnified Party must give written notice of the claim to the Indemnifying Party as soon as practicable after the making of the claim; and
 - b) within 30 days after receipt of that notice, the Indemnifying Party must:
 - i) cause the Indemnified Party to be put in sufficient funds to satisfy or pay the claim; or
 - ii) give notice to the Indemnified Party directing it to take such action (including legal proceedings) in respect of the claim as notified at the Indemnifying Party’s expense; and
 - c) the Indemnifying Party must cause the Indemnified Party to be put, and therefore maintained, in sufficient funds in sufficient time to pay all reasonable costs and expenses of any action or settlement directed by the Indemnifying Party under Clauses 27.6(b) and 27.6(d); and
 - d) the Indemnified Party:
 - i) must take such action as the Indemnifying Party reasonably directs to avoid, dispute, defend, appeal, settle or compromise (“deal with”) the claim and any adjudication thereof; and
 - ii) must not deal with the claims except as directed by the Indemnifying Party.

28. **Guarantee and security deposit**

- 28.1 Where Telco has provided to LIME a bank guarantee, in a form agreed by the Parties and from a bank licenced in Jamaica, the provision of any and all Services by LIME to Telco pursuant to this Agreement, and LIME’s compliance with the terms of this Agreement are conditional upon Telco keeping in place such guarantee which provides, at a minimum, a financial guarantee for the payment of the maximum Early Termination Charges payable by the Telco to LIME (pursuant to Part 1 of the Tariff Schedule) in the event of early termination of this Agreement. In the event that Telco does not keep such valid guarantee in place continuously for a period of five years from the date of this Agreement, LIME may terminate this Agreement pursuant to Clause 24.4. However, LIME may choose to waive the requirement for a guarantee at any point during the period.

- 28.2 In addition to the guarantee required pursuant to Clause 28.1, LIME may require a Telco without sufficient immovable fixed assets to provide an initial security deposit by the Ready for Service date of the first Joining Service provided pursuant to this Agreement (the “Initial Deposit”). The amount of such Initial Deposit shall not exceed the sum of three months Usage Charges for all Services forecast to be used by the Telco in the Forecast agreed pursuant to the Joint Working Manual. On the expiration of a period of twelve months after the Ready for Service date of the first Joining Service, the deposit should be revised to a fair amount that covers the average amount payable by the Telco for billing and credit for the collection cycle applicable to the Telco. Any Deposit provided under this Clause shall be returned to the Telco with interest, less outstanding Charges in the event that the Agreement is terminated. For the purposes of this Clause, “sufficient immovable fixed assets” means fixed assets of the Telco located in Jamaica of a value which would reasonably cover the amount of any security deposit calculated in accordance with this Clause.
- 28.3 In the event that Telco’s Services usage during the first seven days of a Billing Period reasonably indicates to LIME that the Usage Charges which will be payable by Telco to LIME at the end of such Billing Period shall exceed the Deposit, LIME may request that Telco, and Telco shall, within a minimum of five (5) Business Days of the request from LIME, increase the Deposit. The increased Deposit shall be a sum which covers the projected Usage Charges for the Billing Period based on the Services usage during the first seven days of that Billing Period.

29. **Relationship of the Parties**

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

30. Representations of the Parties

30.1 Each Party represents that it is now and will remain in compliance with all laws, regulations, and orders applicable to its performance of its obligations under this Agreement. Each Party shall promptly notify the other Party in writing of any governmental or regulatory action that suspends, cancels, withdraws, limits or otherwise materially affects its ability to perform its obligations under this Agreement.

30.2 Each Party represents and warrants to the other that it:

- a) is a limited liability company duly incorporated or continued and validly existing under the laws of Jamaica and has all necessary corporate power and capacity to own its properties and carry on its business in Jamaica as presently carried on and is duly licensed, registered or qualified under the relevant company or corporate legislation in all jurisdictions where the character of its property owned or leased or the nature of the activities conducted by it makes such licensing, registration or qualification necessary or desirable;
- b) has all necessary corporate power, authority and capacity to enter into this Agreement and to carry out its obligations in accordance with their terms subject to necessary regulatory approval, and that the execution and delivery of this Agreement have been duly authorised by all necessary corporate action on its part; and
- c) is duly qualified to act as a Carrier and Service Provider under the Act and shall hold all valid licences or permits as deemed or granted under the Act to entitle it to interconnection and to own and operate the telecommunications facilities and to provide the specified services necessary to enable it to carry out its obligations under this Agreement.

31. Severability

31.1 The individuality or enforceability for any reason of any part of this Agreement shall not prejudice or affect the validity or enforceability of the remainder of this Agreement.

31.2 If further lawful performance of this Agreement or any part hereof shall be rendered impossible by the final judgement or final order of any court of competent jurisdiction, commission or governmental agency or similar authority having jurisdiction over either Party, the Parties undertake that they will exert their best efforts to agree on an amendment or amendments to this Agreement or on modifications of their practices hereunder in such manner as will fully comply with such judgement or Order and render further performance lawful.

31.3 The enforceability of all rights or obligations of the Parties under this Agreement or the portion thereof judged invalid, illegal or otherwise unenforceable by such judgement or Order, shall be suspended as from the date thereof pending the outcome of negotiations between the Parties as aforesaid though without prejudice

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

32. No Waiver

32.1 Failure or delay by either Party at any time to enforce any of the provisions of this Agreement shall not be construed by the other as a waiver of any such provision nor in any way affect the validity of this Agreement or any part thereof.

32.2 Subject to Clause 23.4, no variation, modification or waiver of any provisions of this Agreement shall in any event be of any force or effect, unless the same is in writing signed by each of the Parties hereto.

32.3 No forbearance, delay or indulgence by either Party in enforcing the provisions of this Agreement shall prejudice or restrict the rights of such Party nor shall any waiver of its rights operate as a waiver of any subsequent breach and no right, power or remedy herein conferred upon or reserved for either Party is exclusive of any right, power or remedy available to such Party and each such right, power or remedy shall be cumulative.

33. Entire Agreement

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

34. Assignment

34.1 Neither Party may assign the whole or any part of this Agreement or its rights or obligations hereunder other than with the prior consent in writing of the other Party, such consent not to be unreasonably withheld or delayed. Notwithstanding the foregoing, neither Party shall require the consent of the other Party to assign the whole or any part of this Agreement or its rights or obligations hereunder to a subsidiary, parent or affiliate.

34.2 A Party may only perform an assignment under Clause 34.1 if:

- a) the assignee is granted all applicable Carrier Licences, Service Provider Licences and Spectrum Licences by the Minister with respect to the ownership and operation of all or part of the facilities of the assigning Party and the provision of all or part of the telecommunications services of the assigning Party and necessary to entitle the assignee to interconnection;
- b) in cases where the assignee is a Associated Company of the assigning Party and ceases to be a Associated Company , the assigning Party shall give prior notification of that fact to the other Party hereto and shall procure that prior to such cessation such assignee reassigns such rights and obligations to it; and

- c) the assigning Party shall procure that the assignee enters into an agreement with the other Party whereby the assignee agrees to observe all of the terms and conditions of this Agreement and, if required by the other Party, the assigning Party shall join in such agreement to guarantee the performance of it by the assignee.

34.3 Either Party may subcontract for the provision of its services or obligations under this Agreement, provided that, in such case, it will not be relieved of its obligations as specified in this Agreement.

35. Notices

35.1 Any notice which may be given by either Party under this Agreement shall be deemed to have been duly given if hand delivered or by facsimile transmission (confirming the same by post) or, where the Parties expressly agree in writing, by electronic mail, to an address to which notices, invoices or other documents may be sent under Clause 35.3 below, or, if no such notification is given, its principal place of business as set out herein.

35.2 Any such notice shall be deemed to have been served on the other Party (a) if hand delivered, on the date of delivery; or (b) if by facsimile, on the first Business Day after the transmission of the facsimile. Any communication by electronic mail shall be deemed to have been made on the day on which the communication is first stored in the receiving Party's electronic mailbox.

35.3 All notices under this Agreement shall be sent:

To LIME -

To Telco -

Cable & Wireless Jamaica Limited

2-6 Carlton Crescent

Kingston 10

[Address]

Fax []

[Fax]

Attention: [Name and Title]

Attention

36. Dispute Resolution

36.1 Subject to Clauses 8.2 and 13.1 of the Legal Framework and Paragraphs 2.2.6, 2.4.7, 2.6.5, and 3.3 of the Joint Working Manual, should a dispute arise with respect to but not limited to the construction, interpretation, or application of this Agreement which is not otherwise settled under other terms of this Agreement, the Parties agree to use the following procedures to resolve the Dispute:

36.2 A Party that wishes to invoke dispute resolution procedures shall indicate its intention to do so by notice in writing to the other Party. Such notice shall contain all relevant

details including the nature and extent of the dispute, and the Party in receipt of the written notice shall acknowledge receipt of such notice within two (2) Business Days.

- 36.3 Within five (5) Business Days of receipt of the dispute notice pursuant to Clause 36.2, the Parties shall commence good faith negotiations with the objective of resolving the Dispute. If the Dispute is not resolved within fifteen (15) calendar days of receipt of the dispute notice, either Party may escalate the dispute pursuant to Clause 36.4.
- 36.4 If the dispute is not resolved pursuant to the process in Clause 36.3, either Party may request in writing that the dispute be escalated, identifying the Party's representative to whom that Party has escalated the dispute. The Party in receipt of such notice shall acknowledge receipt of the notice within two (2) Business Days, and will identify its representative to whom it has escalated the dispute.
- 36.5 The Parties shall continue to negotiate in good faith to try to resolve the dispute at the level of the appropriate senior managers.
- 36.6 In the event that the dispute is not resolved within fifteen (15) calendar days of receipt of the second notice under Clause 36.4, either Party may refer the dispute to the courts of Jamaica.
- 36.7 Nothing herein shall prevent a Party from:
- 36.7.1 Using other dispute resolution procedures agreed to by the Parties in writing;
 - 36.7.2 Seeking (including obtaining or implementing) interim relief in circumstances where the Party is, or will immediately be, subject to a substantial harm due to the conduct of the other Party. Notwithstanding any application for interim relief, the Parties shall resolve the substantive issue in dispute in accordance with Paragraphs 36.1 to 36.6 of this Clause.
 - 36.7.3 Referring the dispute to the OUR for resolution.

37. Governing law and jurisdiction

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

Signed as an Agreement on [] of []

Signed for and on behalf of Cable & Wireless Jamaica Limited

by

Signed for and on behalf of [Telco]

by