

NETSPEAK TERMS & CONDITIONS

1. Effective March 2009 and until otherwise varied by Cable & Wireless Jamaica Limited hereinafter referred to as “FLOW”/ “the Company”), the following terms and conditions shall govern the use of the FLOW Netspeak Service (hereinafter referred to as “the Service”) by residential and business customers of FLOW (hereinafter referred to individually and collectively as the “Customer”). Use of the Service by the Customer will constitute agreement to be bound by these terms and conditions.
 - 3.2 The Customer accepts and agrees that the Service operates with High Speed Internet Access and that the Customer is responsible for obtaining and keeping in good working order, High Speed Internet Access. Residential customers require a minimum bandwidth of 128k and if desirous of using the Service and browsing the Internet at the same time, will need a minimum bandwidth of 256 k. Business customers desirous of enjoying business class service and quality levels will need a minimum bandwidth of 1544k or Dedicated Internet Access service.
 - 3.3 The quality of the Service is subject to the quality of the High-Speed Internet Access service used by the Customer and FLOW does not guarantee fault-free performance of the Service.
 - 3.4 FLOW does not provide High-Speed Internet Access services under this Agreement.
 - 3.5 The Service is solely for Customer’s own use and not for resale or resale of any form of telecommunications service. Non-observance of this restriction shall be grounds for immediate termination of the Service. Customers have no proprietary or other interest in any telephone numbers assigned by FLOW and FLOW shall have the right to change any such telephone number from time to time. Customers are responsible for ensuring that Customer’s equipment and High Speed Internet Access are technically compatible with the Service and Customers must conform to any applicable rules and regulations prescribed
2. **Definitions**
 - 2.1 In these terms and conditions, the following capitalized words and expressions have the following meanings:
 - 2.1.1 Multimedia Terminal Adapter (MTA) means the equipment connected to the ADSL modem which allows the Customer to connect a telephone handset to make calls using the Netspeak service.
 - 2.1.2 High Speed Internet Access means a connection to the Internet using a Local Area Network (LAN), Wide Area Network (WAN), T1 or T3 access line or any always on connection.
 - 2.1.3 Dedicated Internet Access means a connection between the Customer’s Service location and the Company’s exchange or other relevant location used solely for accessing the Internet.
3. **The Service**
 - 3.1 The Service provides Customers with the ability to place voice calls as data from Jamaica to domestic and international destinations and, conversely, to receive voice calls as data within Jamaica from domestic or international destinations using a Multimedia Terminal Adapter (MTA) device and any High Speed Internet Access service with an Ethernet connection.

by the Service Provider, manufacturer or any governmental or other authority.

3.6 Customers are responsible for selecting Service plans and packages and for accessing information on the Service features and the respective charges on FLOW's website or through its toll free number as published from time to time. To view call details and manage telephone features, Customers may access the on-line "Account Center" at <https://myaccountcenter.net> or such other url as may be published from time to time. For the avoidance of doubt FLOW reserves the right to withdraw or vary the Service plans or place restrictions on Service features at any time without notice to the Customer.

3.7 Residential Customers are not permitted to subscribe for more than three Netspeak Service accounts and business customers are limited to one account each.

3.8 The Customer accepts and agrees that the Service will not be available under the following circumstances and that FLOW accepts no responsibility for same:

- i. The Customer's High-Speed Internet Access service is down, or
- ii. Electrical power to the Customer's Terminal Adapter has been interrupted; or
- iii. The Customer's firewall prevents the Service from working or Network congestion or use of data services at the same time as the Service affects sound quality; or
- iv. The Service is not compatible with the Customer's home security systems, satellite TV systems, digital entertainment systems, fax machines, modems, medical monitoring devices, door bell answering service, or other similar automatic reporting systems using telephone lines; or

v. The Service does not work as a result of interference caused by some other appliance, equipment or signal that was not mentioned in paragraph 3.8 (iv) and over which CWJ has no reasonable control.

3.9 The Customer acknowledges that the Service is not intended to be, and shall not be used as a primary line for the local, international, emergency and/or other special access calls. Residential Customers with FLOW's High Speed Internet service will have access to their fixed line telephone number for local, international, emergency and/or other special access calls. Business customers will not have access to an active Netspeak Jamaican number and as such will not have emergency and/or other special access calls. Where the customer utilizes a service provider other than FLOW for its fixed line service, that service provider is responsible for providing access to emergency and other special access services.

3.10 For residential customers the Service provides access to 119 Emergency dialing. All "119" calls will be routed to the Jamaica Police Emergency Center. It is the Customer's responsibility to advise the police of the nature of the emergency, and the physical street address and telephone number where they are located and at which emergency assistance is required. Some features, including access to 119, will not work if the Service is used outside of Jamaica. The Service should not be used to make '119' calls while Customers are traveling, as it will not work as expected. For clarity, all 119 calls made are routed to the Jamaica Police Contact Center, even when traveling, and not to an Emergency Call Centre in the country where the Customer is physically located. FLOW recommends that Customers find another phone for emergency calls when outside of Jamaica. The Service does not function during an electrical power or broadband provider outage and does not provide lifeline services. Therefore, FLOW strongly recommends that Customers maintain fixed line telephone service with a non-electrical telephone (no cordless phones) to ensure

that emergency service and other lifeline services operate during periods of power or broadband service interruption.

3.11 For the avoidance of doubt 119 Emergency dialing is not accessible to business customers.

4. Term and Termination

4.1 The Initial Term of the Service will start on the Service Start Date and will continue for a period of one-year.

4.2 The Service Start Date shall be the date the customer collects the equipment from FLOW's Business Office or Authorized Dealer or if the equipment is delivered to the Customer, on the date of delivery. Customers may not avoid payment of applicable charges on the basis that any Customer apparatus has not been installed, is not operational or is otherwise unavailable as at the Service Start Date.

4.3 Subject to disconnection of the Service for non-payment or misuse, following the expiration of the Initial Term, the Service will automatically renew for successive 30-day periods at FLOW's then current monthly rates, unless either party terminates the Service by giving the other party not less than 30 days prior written notice that it does not wish to renew.

4.4 Customers may terminate the Service at any time before the Service Start Date but will be responsible for any costs incurred by FLOW as a result of the Customer's request for service.

4.5 Customers may terminate the Service at any time during the Initial Term on thirty (30) days prior written notice and payment of the early termination fee for the Service. This fee will not apply if:

- i. the Customer terminates the Service due to FLOW being in default hereunder or
- ii. FLOW terminates the Service due to any reason other than the Customer being in default hereunder.

4.6 The Customer is responsible for the payment of all charges for the Service, including but not limited to

one-time charges and recurring monthly charges.

4.7 All bills rendered to the Customer must be paid in full on or before the final date shown on the bill at any designated collection point or by any designated electronic means of payment.

4.8 Non-payment of bills by the final date will lead to the Customer being suspended and/or disconnected from access to the Service.

4.9 The Customer shall notify FLOW of any contested charge prior to the final date of the bill in which such charge appears. Charges in the same bill, which are not contested, shall be paid on or before the final date. If after investigation it is established to the satisfaction of FLOW that the whole or any part of the contested charge is legitimate, then the Customer shall pay that charge on the final date shown in the next bill. If it is established to the satisfaction of FLOW that the whole or any part of the contested charge was charged in error, then a credit in the relevant amount will be applied to the Customer's next bill.

5. Disconnection

For the avoidance of doubt **FLOW** may disconnect the service if i) the Customer fails to pay any charge by the final date; ii) if the Customer uses FLOW's High Speed Internet Access and/or fixed line service and fails to pay any bill or a part of any bill for these service; iii) the Customer or his/her spouse or any company of which the Customer or his/her spouse is the principal shareholder is indebted to FLOW on any other account for any other service including but not limited to mobile, fixed line or high speed internet service. iv) the Customer is using the Service or any other service or facility in violation of the law, or to defraud FLOW, or to resell telecommunications service, or in contravention of any restriction imposed by FLOW v) the Customer is in breach of any of the terms set out in Clause 9.1 or 9.2 hereof.

6. Equipment and Apparatus

6.1 FLOW is responsible for providing the customer with the following equipment and apparatus:

- a) One Multimedia Terminal Adapter (MTA)
 - b) One Network cable
 - c) One Ethernet Cable
 - d) One AC Power Adaptor
- 6.2 The MTA is not intended for use with PBX systems. Only analog phones may be connected to the MTA, because connecting a digital phone may damage the unit. FLOW is not responsible for damage to the MTA nor to the customer's PBX, where the Customer uses the MTA in this way.
- 6.3 Customers must use an ADSL, Dedicated Internet Access (DIA), Cable or other High-Speed Internet Access modem with an Ethernet port, as the MTA is not compatible with USB connections.
- 6.4 The MTA is the Customer's property, and the Customer must keep it safe and in good condition. For the avoidance of doubt it is the Customer's responsibility to use a power guard or UPS for all equipment to protect against damage from electrical surges or outages. Any loss of, or damage to, the MTA is at the Customer's risk, and the Customer will be required to pay a replacement fee for lost or damaged MTAs not covered by the relevant limited warranty.
- 6.5 The Customer is responsible for the installation of the MTA at the Service Address.
- 6.6 The Customer understands and agrees that it is the Customer's responsibility to physically connect the terminal adapter to a telephone handset. The Customer is responsible for ensuring that MTA equipment and apparatus are physically connected to a secondary telephone handset, accordingly, FLOW strongly recommends that the Customer use one telephone handset for the Service and another separate handset for fixed line telephone service. Handsets are the Customer's responsibility and are not provided with the Service.
- 6.7 FLOW does not warrant the equipment in any manner. FLOW will however, transfer to the Customer (to the extent permitted by the relevant equipment supplier) a warranty

period of 120 days from the date of collection or delivery as relevant.

7. Rates and Charges

- 7.1 It is the Customer's responsibility to acquaint themselves with the rates and charges for the Service and the details of the Service plan subscribed to. FLOW will not accept responsibility for charges incurred by the Customer that are consistent with the published Service description and charges.
- 7.2 Unless otherwise expressly indicated, all international calls not covered in the Customer's plan (international out of plan calls) are billed on a per second basis and all domestic calls not covered by the Customer's plan (local out of plan calls) are billed on a per minute basis. FLOW reserves the right to change the billing increment at any time.
- 7.3 The Customer accepts that is obliged to pay monthly charges which are independent of usage. The Billing Period shall be 30 days and shall commence on the date of the first Billing Cycle after the Service Start Date.
- 7.4 Usage charges are billed for calls made to destinations not included in the subscribed Service Plan(s). For clarity, out of plan calls will be charged at the then current retail rate for such calls. Calls forwarded using the Call Forwarding feature will incur the usage charge applicable to calls to that destination.
- 7.5 Charges are subject to the then applicable General Consumption Tax (GCT).
- 7.6 The charges are payable in Jamaican dollars and are subject to change without notice based on prevailing economic conditions.
- 7.7 Calls must be made from a telephone connected to the MTA to receive the Service rates.
- 7.8 Applicants for the Service who do not have a credit history or who are deemed by FLOW to be high credit risks will be required to pay a deposit. This deposit is subject to change based on changes in FLOW's credit policy.

7.9 From time to time FLOW may offer discounts on its Fixed line Telephone Service. Discounts offered on the Fixed Line Service are not applicable to the Service.

8. Fair Use Policy

FLOW applies a Fair Use Policy (FUP) to the Service, and if the Customer uses the Service or a device attached to the Service in a way which is inconsistent with normal use for the Service as defined by the FUP, the Service may be suspended or disconnected for misuse. It is understood that call usage varies from month to month, however for FLOW's determination of misuse of the Service FLOW shall consider the level of usage in the month during which the determination is made or the preceding month. If the Customer's total usage for the relevant month exceeds the maximum number of minutes allocated in a given month by the FUP, FLOW reserves the right to take appropriate action which action shall include but not be limited to suspending or disconnecting service. For Customer's ease of reference, FLOW shall ensure that the FUP is published on its website.

9. Miscellaneous

9.1 Residential Customers agree not to resell the Service or to use the Service for commercial or non-residential purposes, including but not limited to illegal bypass activities, autodialing, continuous or extensive call forwarding, continuous connectivity, fax broadcasting, fax blasting, telemarketing, automatic dialing, call centres or Internet cafes.

9.2 Business Customers agree not to resell the Service or to use the Service outside of its intended use, including but not limited to illegal bypass activities, autodialing, continuous or extensive call forwarding, continuous connectivity, fax broadcasting, fax blasting, telemarketing, automatic dialing, call centres or Internet cafes.

9.3 Customers may not assign or otherwise transfer this agreement or any rights or obligations under it without the prior written consent of FLOW.

9.4 Business Customers may not travel with their MTAs. For the avoidance of doubt

Business Customers shall only use the Service from the Service address for which the Service was ordered.

9.5 FLOW reserves the right to immediately suspend or terminate the Service of a Residential Customer, if FLOW determines, in its sole discretion, that the Customer is not using the Services for the Customer's personal or residential use.

9.6 The Customer indemnifies and holds FLOW harmless against the following:

- i. Claims for libel, slander or infringement of copyright arising from material transmitted or recorded over its facilities.
- ii. Claims for infringement of patent arising from combining with or using in connection with facilities of FLOW any apparatus, technology or system of the Customer
- iii. Acts or omissions or poor service quality of other service providers. Furthermore, FLOW will not be held responsible for issues with the Service caused directly or indirectly by other service providers and is not obligated to provide any rebates or remedies in these instances.

9.7 Notwithstanding anything to the contrary herein, FLOW 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 service provider or other cause beyond FLOW's reasonable control. If FLOW incurs any liability to the Customer (whether due to tort including negligence or otherwise), arising out of or in connection with the Service, the liability of FLOW shall be limited to the amount of the pro-rata monthly access charge during the period that the Service was affected. In no event shall FLOW be liable to the Customer or his employee, agents, clients, or any third party for:

- i) Any delay, loss or incidental, general or consequential damages arising out of, or in connection

with, FLOW's failure to perform under this agreement; or

ii) Death or personal injury or damage to their property arising out of or in connection with the service or the installation, repair or maintenance of the system.

9.8 FLOW makes no representation and gives no warranties, except to the extent expressly set forth herein.

9.9 If any provision of these terms and conditions are deemed by any court or regulatory authority of competent jurisdiction to be void invalid or unenforceable, it shall be severed from these terms and conditions and the remaining terms and conditions shall be unaffected and shall be enforceable as an agreement between the parties.

9.10 Notice to Customers may be posted on our website, published in any daily newspaper circulated in the Island, sent to Customer's billing address or e-mail address, or sent by SMS message or such other means by which we may reasonably notify Customers as may be available to FLOW from time to time.

9.11 FLOW has the right to modify or amend these terms and conditions by reasonable Notice to Customers. If the Customer continues to use the Service after such notice has been sent, then he/she is deemed to have accepted such modification.

10. Governing Law

10.1 Jamaican Law, excluding its conflict of laws rules, shall govern the performance and interpretation of these terms and conditions of Service.