

DATED 16 NOVEMBER 2015

**Cable & Wireless Communications Plc**

and

**Cable & Wireless Communications, Inc.**

and

**CWC New Cayman Limited**

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MANAGEMENT AND SERVICES AGREEMENT

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Slaughter and May  
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London EC1Y 8YY  
(ADJ/RQD/HGP/TF)

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**THIS MANAGEMENT AND SERVICES AGREEMENT** (this "**Agreement**") is made on 16 November 2015.

**BETWEEN:**

1. **Cable & Wireless Communications Plc**, having a registered office at 2nd Floor 62-65 Chandos Place, London, United Kingdom, WC2N 4HG, UK (a company duly incorporated and existing under the laws of England and Wales under registered number 07130199) ("**CWC**");
2. **Cable & Wireless Communications, Inc.**, having a registered office at 1 Alhambra Plaza, Coral Gables, FL 33134, USA (a company incorporated in the USA, registered number FEI 132922204) ("**CWC Inc.**"); and
3. **CWC New Cayman Limited**, having a registered office at Walkers Corporate Limited, Cayman Corporate Centre, 27 Hospital Road, George Town, Grand Cayman KY1-9008, Cayman Islands (a company incorporated in the Cayman Islands, registered number 305513) ("**Carve-out Co**"),

(each a "**Party**" and together, the "**Parties**").

**WHEREAS:**

- (A) Pursuant to a share purchase agreement dated on or around the date of this Agreement, the Sellers (as defined below) have agreed to transfer Carve-out Co to Carve-out Holdco.
- (B) The Parties have agreed to provide or procure the provision of certain services to each other (and, in the case of CWC and Carve-out Co, to CWC's subsidiaries) on the terms and subject to the conditions of this Agreement.
- (C) The Parties intend that Carve-out Co and its controlling persons shall continue to have ultimate and full ownership and control of, and decision-making authority in respect of, the Business and direction over all services to be provided to it under this Agreement.

**1. Interpretation**

**1.1 In this Agreement:**

"**Affected Party**" has the meaning given to it in clause 23.1;

"**Applicable Employees**" has the meaning given in paragraph 1.1 of Schedule 1;

"**Applicable Law**" means any and all law whether civil, criminal or administrative and common law, statutes, statutory, instruments, treaties, convention, directives regulations or rules made thereunder in any applicable jurisdiction,

including, without limitation, the rules, regulations and policies of the FCC, in each case which is binding on the relevant person or in respect of the relevant matter as the context requires;

**“Assignment and Asset Transfer Agreement”**

means the assignment and asset transfer agreement to be entered into between Carve-out Co and the Sellers pursuant to which the Carve-Out Assets shall transfer from the Sellers to Carve-out Co, dated on or around the date of this Agreement;

**"Business"**

means the business conducted by Carve-out Co, being all business relating to the Carve-out Assets;

**"Business Day"**

means a day (other than a Saturday or a Sunday) on which banks are open for general business in each of London, United Kingdom and New York, New York;

**“Carve-Out Assets”**

means the US FCC-licensed business of the CWC Group;

**“Completion”**

means the satisfaction of the Condition;

**“Condition”**

means the condition set out in clause 2.1;

**"CWC Group"**

means CWC and all of its subsidiaries, including, for certainty, CWC Inc.;

**"CWC Group Intellectual Property"**

means Intellectual Property owned by members of the CWC Group;

**"Carve-out Co Data"**

has the meaning given to it in clause 25.3;

**“Carve-out Holdco”**

means CWC New Cayman Holdco Limited of Walkers Corporate Limited, Cayman Corporate Centre, 27 Hospital Road, George Town, Grand Cayman KY1-9008, Cayman Islands (a company duly incorporated and existing under the laws of the Cayman Islands with company number 305511);

**“Carve-out Share Purchase Agreement”**

means the share purchase agreement to be entered into between the Sellers and Carve-out Holdco (as purchaser) pursuant to which Carve-out Co shall be transferred to Carve-out Holdco, dated on or around the date of this Agreement;

**"Damages"**

has the meaning given to it in clause 21;

**"FCC"**

means the United States Federal Communications

Commission;

**"Force Majeure Event"**

means any failure to perform, damages, losses or destruction, or malfunction of any equipment, caused or occasioned by, or due to fire, earthquake, flood, water, the elements, strikes, labour disputes or shortages, utility curtailments, power failures, explosions, civil disturbances, acts of god and nature, criminal activity, embargoes, epidemics, wars, riots, insurrections, cable failures or cuts, other material failures, governmental or any regulatory agency actions, shortages of equipment or supplies, unavailability of transportation, acts or omissions of third parties, in each case beyond the reasonable control of the Affected Party and with the effect of preventing the Affected Party from complying with its obligations under this Agreement;

**"Good Industry Practice"**

means in relation to any undertaking and any circumstances, the exercise of that degree of professionalism, skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or persons or an internationally recognised company engaged in the same type of activity under the same or similar circumstances;

**"Governmental Authority"**

means any nation or government, any state province, city, municipal entity or other political subdivision thereof, and any governmental, executive, legislative, judicial, taxing, administrative or regulatory agency, department, authority, instrumentality, commission, board, court, central bank or similar body of or pertaining to government, whether federal, state, territorial, local or foreign;

**"Intellectual Property"**

means patents, trade marks, rights in designs, copyrights, database rights (whether or not any of these is registered and including applications for registration of any such thing) and all rights or forms of protection of a similar nature or having equivalent or similar effect to any of these which may subsist anywhere in the world;

**"Licences"**

means the FCC licences held by Carve-out Co, including (1) FCC 214 licence, licence number ITC-214-20100512-00191; (2) FCC licence for the Gemini-Bermuda cable, licence number SCL-LIC-20070925-00017; and (3) FCC licence for the Pacific Caribbean Cable Systems (PCCS) cable, licence number SCL-LIC-20130122-00001;

**"Proceedings"**

has the meaning given to it in clause 30.1;

<b>"Redundant Employee"</b>	has the meaning set out in paragraph 1.1 of Schedule 1;
<b>"Sellers"</b>	means CWC Inc., CWC WS Holdings Panama S.A., Cable and Wireless (BVI) Limited, Cable and Wireless (EWC) Limited and Cable and Wireless Network Services Limited;
<b>"Services"</b>	has the meaning given to it in clause 3.1;
<b>"Services Fee"</b>	has the meaning given to it in clause 17.1;
<b>"Tax"</b>	includes (without limitation) all taxes, levies, duties, imposts, charges and withholdings of any nature whatsoever, whether of the United Kingdom or elsewhere, together with all penalties, charges and interest relating to any of them or to any failure to file any return required for the purposes of any of them;
<b>"Termination Date"</b>	has the meaning set out in paragraph 1.3 of Schedule 1;
<b>"Working Hours"</b>	means 8.30 a.m. to 6.30 p.m. on a Business Day.

1.2 In this Agreement, unless otherwise specified:

- (A) references to clauses and schedules are to clauses of and schedules to this Agreement;
- (B) use of any gender includes the other genders;
- (C) references to a **"company"** shall be construed so as to include any corporation or other body corporate, wherever and however incorporated or established;
- (D) references to a **"person"** shall be construed so as to include any individual, firm, company, government, state or agency of a state, local or municipal authority or government body or any joint venture, association or partnership (whether or not having separate legal personality);
- (E) the expression **"subsidiary"** means, with respect to any person, a person that is controlled by such person;
- (F) the expressions **"ownership"** and **"control"** shall have the meanings given to them in the rules, regulations and policies of the FCC, including 47 C.F.R. § 63.09(b), pursuant to which **"control"** is defined to include actual working control in whatever manner exercised and is not limited to majority stock ownership, and to include direct or indirect control;

- (G) a reference to any statute or statutory provision shall be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or re-enacted;
- (H) any reference to a "**day**" (including within the phrase "Business Day") shall mean a period of 24 hours running from midnight to midnight;
- (I) references to "\$" are to US dollars and reference to any amount in such currency shall be deemed to include reference to an equivalent amount in any other currency;
- (J) references to "**indemnify**" any person against any circumstance shall include indemnifying and keeping him harmless, on an after tax basis, from all actions, claims and proceedings from time to time made against him and all loss, damage, payments, costs or expenses suffered made or incurred by him as a consequence of that circumstance;
- (K) a reference to any other document referred to in this Agreement is a reference to that other document as amended, varied, novated or supplemented (other than in breach of the provisions of this Agreement) at any time;
- (L) headings and titles are for convenience only and do not affect the interpretation of this Agreement;
- (M) a reference to any legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall in respect of any jurisdiction other than New York be treated as a reference to any analogous term in that jurisdiction;
- (N) the rule known as the ejusdem generis rule shall not apply and accordingly general words introduced by the word "other" shall not be given a restrictive meaning by reason of the fact that they are preceded by words indicating a particular class of acts, matters or things; and
- (O) general words shall not be given a restrictive meaning by reason of the fact that they are followed by particular examples intended to be embraced by the general words.

- 1.3 The schedules to this Agreement form part of this Agreement and shall have the same force and effect as if expressly set out in the body of this Agreement, and any reference Management and Services Agreement to this Agreement shall include the schedules, provided that in the event of any inconsistency between the terms of this Agreement and the terms of any of the schedules, the terms of this Agreement shall prevail.

## 2. **Condition**

- 2.1 This Agreement shall come into full force and effect immediately upon completion of the Carve-out Share Purchase Agreement (the "**Condition**").



2.2 Each of the Parties will use all reasonable endeavours to fulfil or procure the fulfilment of the Condition as soon as possible.

2.3 The Condition may not be waived by any Party.

### **3. Provision of Services**

3.1 On and from Completion and throughout the term of this Agreement:

(A) CWC (or such other member of the CWC Group) and CWC Inc. shall be responsible for, perform and provide, or procure the performance and provision of, certain services required by Carve-out Co (as described in this clause 3 and clauses 4 to 13) in connection with the operation of the Business and so as to enable Carve-out Co to conduct the Business in a manner consistent with the way it has been conducted in the 12 months prior to the date of this Agreement, and to meet its obligations to its customers and under its Licences and all other contractual and legal obligations; and

(B) Carve-out Co shall be responsible for, perform and provide, or procure the performance and provision of, certain services required by the CWC Group (as described in this clause 3 and clauses 4 to 13) in connection with the operation of the CWC Group's businesses,

(together, the "**Services**").

3.2 In connection with the provision of Services to Carve-out Co, CWC (on behalf of itself and the CWC Group) shall procure and provide to Carve-out Co (on a non-exclusive basis) the required time and services of all such individuals required in connection with such Services described in this Agreement.

3.3 In addition to the Services specified in clauses 4 to 13:

(A) CWC shall provide, or procure that other relevant members of the CWC Group provide, to Carve-out Co all other services which the CWC Group has provided to Carve-out Co within the 12 months immediately prior to the date of this Agreement; and

(B) Carve-out Co shall provide to any member of the CWC Group all other services which any Seller has provided to that member of the CWC Group in connection with the Carve-out Assets within the 12 months immediately prior to the date of this Agreement and which Carve-out Co is still reasonably capable of providing as at the date of this Agreement.

3.4 Each Party shall perform its duties and obligations under this Agreement (and, in the case of CWC, procure that all its relevant subsidiaries perform):

(A) in accordance with all Applicable Law and the Licences; and

(B) in all material respects in accordance with Good Industry Practice.

#### **4. Management, marketing, sales, operations and support services**

4.1 Subject to clauses 15 and 16, CWC Inc. (or CWC shall procure that the relevant member of the CWC Group) shall:

- (A) market and sell capacity provided by Carve-out Co to customers in the US market;
- (B) provide executive management services and all personnel necessary or desirable to manage the day-to-day operations of Carve-out Co;
- (C) manage the network operations of Carve-out Co, including the coordination and supervision of all maintenance, alterations, improvements, upgrades and replacements of and to facilities and equipment used in connection with the Business, including cable assets and facilities;
- (D) provide Carve-out Co with support services including engineering, legal, finance, accounting, corporate IT services and similar operational and support services; and
- (E) undertake such additional activities as are required for the operations of Carve-out Co.

#### **5. Billing management**

5.1 Subject to clauses 15 and 16, CWC Inc. (or CWC shall procure that the relevant member of the CWC Group) shall provide accounts payable and accounts receivable services to Carve-out Co, which shall include arranging for the billing and collection of all fees, charges or other compensation due to the Business and arranging for the payment of all expenses and fees incurred or payable by Carve-out Co.

5.2 There shall be no commingling of the funds of CWC Inc. (or any other member of the CWC Group) with the funds of Carve-out Co. Carve-out Co will maintain its own bank accounts. All receipts associated with the operations of Carve-out Co shall be deposited in the Carve-out Co account, and all expenses of Carve-out Co shall be paid from such account. Carve-out Co will maintain authority and ultimate control over payment of all financial obligations and operating expenses of its operations, and shall receive the revenues and profits from such operation.

#### **6. Contracts and contract management**

6.1 Subject to clauses 15 and 16, and after consultation with Carve-out Co, CWC Inc. (or CWC shall procure that the relevant member of the CWC Group) shall coordinate and manage the negotiation, execution, and administration by Carve-out Co of all customer and sales contracts in relation to the Business, acting reasonably and on a timely basis. Such services shall include the coordination, negotiation, execution and delivery by Carve-out Co of all such contracts deemed advisable by CWC Inc., including customer and sales contracts with new customers of the Business, and renewals to, and amendments of, existing customer and sales contracts, including applicable schedules

and service orders for new services, upgrades or reconfigurations thereof. All such new, amended or renewed contracts must be entered into and executed by: (i) CWC Inc. as agent for Carve-out Co; (ii) Carve-out Co as principal; and (iii) the relevant customer. Customer and sales contracts shall be on terms and conditions, including prices, consistent with past practices or on such other terms and conditions as are determined in consultation and agreement with Carve-out Co.

- 6.2 Subject to clauses 15 and 16, CWC Inc. (or CWC shall procure that the relevant member of the CWC Group) shall coordinate and manage the drafting, negotiation, execution, and administration of all service contracts for Carve-out Co with vendors of telecommunications and other services, as may be necessary or desirable for Carve-out Co to meet its obligations to customers under existing customer and sales contracts and new customer and sales contracts. All such new, amended or renewed vendor contracts must be entered into and executed by: (i) CWC Inc. as agent for Carve-out Co; (ii) Carve-out Co as principal; and (iii) the relevant vendor. Contracts shall be on terms and conditions, including prices, consistent with past practices or on such other terms and conditions as are determined in consultation and agreement with Carve-out Co.

## **7. Reporting and record keeping**

CWC Inc. (or CWC shall procure that the relevant member of the CWC Group) shall, during the term of this Agreement, deliver to Carve-out Co in respect of Carve-out Co and the Business:

- (A) monthly management accounts including a profit/loss estimate within 20 days of the end of each month;
- (B) a draft business plan (including a draft budget) for the forthcoming financial year
  - (i) within 45 days after the date of this Agreement; and
  - (ii) no later than 45 days prior to the commencement of each financial year,

which Carve-out Co shall review and, within 15 days of their receipt of the later such document and any additional information requested from CWC Inc. relating thereto, approve, subject to any amendments to such plan (and budget) as Carve-out Co may, acting reasonably, determine are necessary or desirable; and

- (C) such other information as is reasonably requested by Carve-out Co to monitor CWC and CWC Inc.'s compliance with its obligations under this Agreement.

## **8. Insurance**

CWC Inc. (or CWC shall procure that the relevant member of the CWC Group) shall arrange for and ensure that Carve-out Co shall maintain property, casualty, liability, D&O and other insurance in connection with the Business as may be commercially reasonable and as agreed upon by the Parties to this Agreement.

## **9. Employees and independent contractor status**

- 9.1 Schedule 1 shall apply in respect of the provision of employees, consultants and other persons by Parties (and their subsidiaries) to other Parties (and their subsidiaries) in fulfilment of or connection with the Services.
- 9.2 CWC Inc. (or CWC shall procure that the relevant member of the CWC Group) shall provide, or procure the provision of, the services of all such employees, consultants and other persons to Carve-out Co as are required in connection with the Services to Carve-out Co. The officers and directors of Carve-out Co set out in Schedule 2 will retain ultimate oversight and control over the actions of these employees, consultants and other persons, subject to the reasonable approval of Carve-out Co in accordance with clause 11.
- 9.3 Notwithstanding anything contained in this Agreement, all employees and officers of any Party (or subsidiary of a Party) shall only be deemed employees of the Party (or subsidiary of a Party) that is their employer as at the date of this Agreement, and shall not be deemed employees of any other Party to this Agreement. Each of the Parties (and their relevant subsidiaries) shall be responsible for the payment of all compensation of its respective employees and officers, including all employee benefits and all taxes with respect thereto. Without limiting the generality of the foregoing, any individuals employed by or subcontracting with Carve-out Co shall be under the sole control and direction of Carve-out Co.
- 9.4 CWC Inc. (or CWC shall procure that the relevant member of the CWC Group) shall serve as an independent contractor in rendering the Services to Carve-out Co, and nothing in this Agreement shall be construed as establishing a partnership or joint venture relationship between any of the Parties. Any individuals employed by or subcontracting with CWC Inc. (or the CWC Group, to the extent applicable) to perform any part of its obligations hereunder shall be under the sole control and direction of CWC Inc. (or the relevant member of the CWC Group) and CWC Inc. shall be solely responsible for all liabilities and expenses thereof, as more particularly set out in Schedule 1. The Parties agree that Carve-out Co will treat CWC Inc. (or the relevant member of the CWC Group) as an independent contractor for purposes of all tax laws (local, state and federal) and file any required forms consistent with that status. CWC Inc. (or the relevant member of the CWC Group) agrees, as an independent contractor, that neither it nor its personnel are entitled to unemployment benefits in the event this Agreement terminates, or workers' compensation benefits in the event that CWC Inc.'s (or the relevant member of the CWC Group's) respective personnel are injured in any manner while performing obligations under this Agreement. CWC Inc. (or the relevant member of the CWC Group) will be solely responsible to pay any and all local, state, and/or federal income, social security, unemployment taxes for its personnel, and workers' compensation coverage.

## **10. Limited authority**

Subject to clauses 15 and 16, and except for the purposes of clause 6 or where otherwise expressly provided, CWC Inc. (or the relevant member of the CWC Group) shall have authority to execute in the name and on behalf of Carve-out Co such

instruments, documents or agreements as may be reasonably necessary, proper or advisable in the rendering by CWC Inc. (or the relevant member of the CWC Group) of Services to Carve-out Co and consistent with the terms of this Agreement.

#### **11. Sub-contracting**

CWC and CWC Inc. may sub-contract or otherwise delegate the performance of any Services to be provided to Carve-out Co, provided that CWC and CWC Inc., as the case may be, shall remain at all times responsible to Carve-out Co for the performance of their respective obligations under this Agreement and that CWC or CWC Inc. (as relevant) must first receive the prior written consent of Carve-out Co (which consent shall not be unreasonably delayed or withheld) to subcontract or otherwise delegate the performance of any Services to any person other than a CWC Group member.

#### **12. Services provided by Carve-out Co to CWC Group members**

Carve-out Co shall provide CWC Group members with:

- (A) capacity services, backhaul and voice services, co-location services, IP services, cloud infrastructure services and interconnection services; and
- (B) such other services as the CWC Group may reasonably require from time to time, provided that Carve-out Co has the requisite capability to perform such services.

#### **13. Access to Carve-out Co's equipment and networks**

Subject to clauses 15 and 16, Carve-out Co shall provide:

- (A) CWC Inc. (or the relevant member of the CWC Group) with access to its networks, facilities, equipment and assets to the extent such access is reasonably required by CWC Inc. (or the relevant member of the CWC Group) to provide Services to Carve-out Co or otherwise fulfil its obligations under this Agreement, or to perform any services or functions for any CWC Group members, subject to the oversight by Carve-out Co; and
- (B) CWC Group members with access to, and allow CWC Group members to have use of, any of their assets which may be required by CWC Group members for the provision of cloud infrastructure services.

#### **14. Intellectual Property**

- 14.1 CWC hereby grants to, and agrees to procure the grant to, Carve-out Co a non-exclusive, royalty-free and non-transferable licence of all CWC Group Intellectual Property, and any rights of information or other data (in whatever form or medium), owned and provided by any member of the CWC Group solely to the extent necessary to:

- (A) conduct the Business in a manner consistent with the way it has been conducted in the 12 months prior to the date of this Agreement; or
- (B) provide Services under this Agreement to any member of the CWC Group (including CWC Inc.) in accordance with and subject to the terms of this Agreement.

14.2 Carve-out Co hereby grants to CWC and each other member of the CWC Group (including CWC Inc.) a non-exclusive, royalty-free and non-transferable licence of all Intellectual Property owned by Carve-out Co to the extent necessary for CWC Group members (including CWC Inc.) to provide Services to Carve-out Co in accordance with, and subject to, the terms of this Agreement.

14.3 Save as expressly provided for in this Agreement, no Party shall be granted any rights in respect of the Intellectual Property of any other Party.

## **15. Control and ownership of Business**

15.1 Notwithstanding anything else in this Agreement, during the term of this Agreement Carve-out Co and its controlling persons shall continue to have ultimate and full ownership and control of, and decision-making authority in respect of, the Business including, without limitation, telecommunications networks (and all maintenance, alterations, improvements, upgrades and replacements of such networks), unfettered access to network facilities and equipment, control of all regulatory filings relating to the Business and all services to be provided by CWC Inc. (or the relevant member of the CWC Group) to Carve-out Co.

15.2 Neither CWC Inc. nor the relevant member of the CWC Group shall have the authority to undertake any of the following actions without the prior written consent of Carve-out Co (which consent shall not be unreasonably withheld or delayed), as applicable:

- (A) incur any debt on behalf of Carve-out Co not in the ordinary course of business;
- (B) enter into contracts or commitments for or on behalf of Carve-out Co which individually have a value exceeding \$200,000 or collectively have a value exceeding \$500,000;
- (C) incur any expenses exceeding \$500,000 except under contracts reviewed, approved, and executed by Carve-out Co;
- (D) settle any legal action or litigation in the name of Carve-out Co;
- (E) attempt to surrender or transfer any governmental authorization, including any License;
- (F) make any filings on behalf of Carve-out Co with the FCC or other governmental authority;

- (G) grant a security interest in or hypothecate or otherwise encumber any assets of Carve-out Co; or
- (H) enter into any agreements for the provision of services which Carve-out Co is prohibited from offering.

**16. Compliance with Licences and Applicable Law**

- 16.1 Carve-out Co shall ensure that it uses the Licences in the operation of the Business in accordance with all Applicable Law.
- 16.2 Each Party hereby expressly agrees that it will take no action which:
  - (A) would be a violation of Applicable Law;
  - (B) would be a material violation of any License;
  - (C) could reasonably be expected to have the effect of causing the cancellation, revocation or modification in any adverse way of any License; or
  - (D) could be expected to otherwise impair the maintenance in good standing or renewal of any License.
- 16.3 The Parties intend and agree that this Agreement and the obligations to be performed under it shall be in compliance with the terms and conditions of all Applicable Law. If any Governmental Authority or other body of competent jurisdiction, including the FCC, determines that any provision of this Agreement violates any Applicable Law, the Parties shall immediately use all commercially reasonable efforts to amend this Agreement so as to bring this Agreement into compliance with Applicable Law but so far as possible to reflect the intention of the Parties on entering into this Agreement. It is expressly understood and agreed by the Parties that nothing in this Agreement is intended to give CWC, CWC Inc. or any other person any right which would be deemed to constitute a transfer by Carve-out Co of control of any of its operations, any or all of its regulated telecommunications assets, or of one or more of its Licences to CWC, CWC Inc. or any other person.
- 16.4 Each Party acknowledges and agrees that Carve-out Co is subject to certain specific obligations and conditions with respect to the ownership, use and operation of its regulated telecommunications assets, as are reflected in the terms of its Licences relating thereto, in addition to its general obligations of compliance with Applicable Laws. As such, the Services to be provided by the CWC Group to Carve-out Co under this Agreement are not intended to diminish or restrict Carve-out Co's compliance with its obligations before any applicable Governmental Authority, including the FCC, and this Agreement shall not be construed to interfere with Carve-out Co's ability to comply with the rules, regulations or directives of any Governmental Authority with respect to the Licences or its regulated telecommunications assets generally.



## 17. **Services Fee**

- 17.1 In consideration for CWC and CWC Inc. (or the relevant member of the CWC Group) providing or procuring the provision of Services to Carve-out Co under this Agreement, Carve-out Co must pay CWC Inc. a total monthly fee of an amount equal to 20 per cent of its revenue for each calendar month during the term of this Agreement, plus the amount of any Tax payable by CWC Inc. in connection with such fee (the "**Services Fee**").
- 17.2 In respect of any calendar month that is partially but not wholly within the term of this Agreement, the Services Fee for that month will be determined by reference to the revenue of Carve-out Co during such part of that calendar month.
- 17.3 Carve-out Co must pay the applicable Services Fee to CWC Inc. within twenty (20) Business Days of the end of each calendar month or part of a calendar month during the term of this Agreement. Such payment must be made in the form of immediately available funds paid to CWC Inc. by way of telegraphic transfer into a bank account nominated by it at least two Business Days prior to the due date for such payment.
- 17.4 No fees are payable by CWC or any member of the CWC Group to Carve-out Co for Services provided to them by Carve-out Co under this Agreement, the consideration for such Services being the reciprocal provision of Services by CWC and its subsidiaries (including CWC Inc.) to Carve-out Co under this Agreement.

## 18. **Audit of provision of Services by CWC and CWC Inc.**

- 18.1 CWC and CWC Inc. shall grant to Carve-out Co and its auditors the right to access their employees and records during normal business hours on five Business Days' notice in order to undertake an audit of CWC and CWC Inc.'s compliance with their obligations under this Agreement, including adherence to the business plan adopted pursuant to clause 7. Any such audit shall be undertaken so as to avoid material disruption to the business of the Party or Parties being audited.
- 18.2 CWC Inc. (or CWC shall procure that the relevant member of the CWC Group) shall use reasonable commercial efforts to ensure that any of its subcontractors, personnel or agents shall, promptly provide all reasonable co-operation and assistance in relation to any audit under clause 18.1.
- 18.3 If at any time, in the reasonable opinion of Carve-out Co, an audit under clause 18.1 reveals material concerns about CWC or CWC Inc.'s compliance with their obligations under this Agreement, without prejudice to Carve-out Co's other rights and remedies, Carve-out Co may request CWC Inc. and (if the concerns relate to the provision of Services by CWC Group members other than CWC Inc.) CWC to prepare a remedial plan detailing how they shall correct the failure and ensure that, to the extent possible, such a failure does not reoccur. CWC Inc. and (if relevant) CWC shall prepare a draft remedial plan promptly and in any event within two weeks following receipt of the request. Carve-out Co may review the draft remedial plan, and CWC Inc. and (if relevant) CWC shall attend any meetings at Carve-out Co's request to discuss the draft remedial plan. CWC Inc. and (if relevant) CWC shall make any agreed alterations or



corrections to this draft remedial plan and submit a final remedial plan to Carve-out Co for approval. Following Carve-out Co's approval, CWC Inc. and (if relevant) CWC shall implement the remedial plan.

## 19. Audit of Carve-out Co

- 19.1 Carve-out Co shall grant to CWC and its auditors the right to access Carve-out Co's employees and records during normal business hours on five Business Days' notice in order to undertake an audit of Carve-out Co's compliance with its obligations under this Agreement. Any such audit shall be undertaken so as to avoid material disruption to the business of the Party or Parties being audited.
- 19.2 Carve-out Co shall, and shall use reasonable commercial efforts to ensure that any of its subcontractors, personnel or agents shall, promptly provide CWC with all reasonable co-operation and assistance in relation to any audit under clause 19.1.
- 19.3 If at any time, in the reasonable opinion of CWC an audit under clause 19.1 reveals material concerns about Carve-out Co's compliance with its obligations under this Agreement, without prejudice to CWC and CWC Inc.'s other rights and remedies, CWC may request Carve-out Co to prepare a remedial plan detailing how Carve-out Co shall correct the failure and ensure that, to the extent possible, such a failure does not reoccur. Carve-out Co shall prepare a draft remedial plan promptly and in any event within two weeks following receipt of the request. CWC may review the draft remedial plan and Carve-out Co shall attend any meetings at CWC's request to discuss the draft remedial plan. Carve-out Co shall make any agreed alterations or corrections to this draft remedial plan and submit a final remedial plan to CWC for approval. Following CWC's approval, Carve-out Co shall implement the remedial plan.

## 20. Warranties

Each Party warrants to each other Party that:

- (A) It is validly incorporated, in existence and duly registered and has the requisite capacity, power and authority to enter into and perform this Agreement and to execute, deliver and perform any obligations it may have under this Agreement.
- (B) Its obligations under this Agreement constitute binding obligations of that Party in accordance with the terms of this Agreement.

## 21. Indemnity

CWC Inc. shall indemnify and hold harmless Carve-out Co and each of its shareholders, officers, directors, employees and agents (individually, a "**Carve-out Co Indemnitee**") from and against any and all claims, demands, costs, damages, losses, liabilities, joint and several, expenses of any nature (including reasonable attorneys', accountants' and experts' fees and disbursements), judgments, fines, and settlements (collectively, "**Damages**"), including Damages arising from any and all claims, demands, actions, suits or proceedings, civil, criminal, administrative or investigative, in which Carve-out Co Indemnitee may be involved or threatened to be involved, as a Party or otherwise,

arising out of a breach of this Agreement by CWC Inc., CWC or another member of the CWC Group.

## **22. Limitation of liability**

Notwithstanding anything else in this Agreement, no Party shall be liable to another Party for any incidental, indirect, special, punitive, exemplary or consequential loss or damages arising out of, or in connection with, indirect or consequential loss, damage, cost or expense, or loss of profits or revenue suffered or incurred by such other Party as a result of a breach of this Agreement, whether such liability arises out of contract statute or otherwise (but excluding fraud, wilful misconduct or any other type of liability that by law cannot be excluded), and each Party releases the other Parties from such liability.

## **23. Force Majeure**

- 23.1 Notwithstanding any provision of this Agreement to the contrary, if a Force Majeure Event prevents a Party (the "**Affected Party**") from complying with any of its obligations under this Agreement, the Affected Party shall be excused performance and shall not be liable to any other Party to this Agreement for failure to perform any obligation under this Agreement for the duration of the Force Majeure Event, save that a Party is not entitled to rely on this clause 24 to the extent that it fails to take all commercially reasonable steps to mitigate and minimise the period of the delay or to provide reasonable precautions or workarounds. All requirements as to notice and other performance required hereunder within a specified period shall be automatically extended to accommodate the period of pendency of such Force Majeure Event which shall interfere with such performance, A Force Majeure Event that prevents a Party hereto from performing any obligation under this Agreement shall not excuse the non-performance of the other Parties if such other Parties are not also subject to the Force Majeure Event.
- 23.2 When a Force Majeure Event prevents the Affected Party from complying with any of its obligations under this Agreement, the Affected Party must notify the other Parties immediately and shall keep the other Parties regularly informed of its progress in resuming full performance of its obligations.
- 23.3 Upon the cessation of the Force Majeure Event, the Affected Party must promptly notify in writing the other Parties of such cessation and resume performance of the affected obligations.
- 23.4 If, as a result of a Force Majeure Event, the performance by the Affected Party of some but not all of its obligations under this Agreement are affected, the Affected Party nevertheless remains liable for the performance of those obligations not affected by the Force Majeure Event.
- 23.5 Notwithstanding anything else in this clause 23, no Force Majeure Event shall excuse any obligation to make timely payment of money when due under this Agreement.

## 24. Term and termination

24.1 Subject to the remainder of this clause 24, this Agreement shall take effect from the date of this Agreement and continue in force in respect of each of the Services until the earlier of:

- (A) the non-pro-forma transfer of control or assignment of the Licences; and
- (B) the mutual agreement of the Parties.

24.2 In the event of the direct or indirect sale or other disposition of any of the shares in or the business or assets of Carve-out Co to persons other than Carve-out Holdco, unless otherwise agreed by the Parties, the Agreement shall terminate on the date of such sale or other disposition.

24.3 In the event of a material breach of this Agreement by Carve-out Co:

- (A) where such material breach can reasonably be remedied within 25 Business Days, and continues unremedied for more than 25 Business Days after written notice to Carve-out Co of such material breach; or
- (B) where such material breach cannot reasonably be remedied within a 25 Business Day period, is not remedied diligently by Carve-out Co as soon as reasonably practicable and in any event within 40 Business Days, or such longer period of time as agreed by the Parties, after written notice to Carve-out Co of such material breach,

each of CWC and CWC Inc. may terminate this Agreement (in whole or in respect of any affected Service) immediately.

24.4 In the event of a material breach of this Agreement by CWC or CWC Inc.:

- (A) where such material breach can reasonably be remedied within 25 Business Days, and continues unremedied for more than 25 Business Days after written notice to CWC or CWC Inc. (as applicable) of such material breach; or
- (B) where such material breach cannot reasonably be remedied within a 25 Business Day period, is not remedied diligently by CWC or CWC Inc. (as applicable) as soon as reasonably practicable and in any event within 40 Business Days, or such longer period of time as agreed by the Parties, after written notice to CWC or CWC Inc. (as applicable) of such material breach,

Carve-out Co may terminate this Agreement (in whole or in respect of any affected Service) immediately.

24.5 Notwithstanding anything else in this clause 25, the Parties may, by mutual agreement, terminate this Agreement (in whole or in respect of any specified Services mutually agreed between the Parties) at any time.

- 24.6 Termination or expiry of this Agreement for any reason, whether under this clause or not, shall be without prejudice to the accrued rights and liabilities of the Parties on the date of such termination or expiry.

**25. Compliance with law and data processing**

- 25.1 Each Party shall comply (and procure that its relevant subsidiaries comply) with all Applicable Law in performing its obligations under this Agreement.
- 25.2 Each Party warrants and undertakes that it has in place and will maintain appropriate organisational and technological processes and procedures to perform the Services pursuant to this Agreement.
- 25.3 Subject to all Applicable Law, including limitations with respect to customer proprietary network information, Carve-out Co shall provide customer data in relation to customers of Carve-out Co to CWC Group members upon request together with such other information as CWC Group members may reasonably require including financial and operational data, in order to provide Services to Carve-out Co ("**Carve-out Co Data**"). Subject to all Applicable Law, CWC Group members shall provide Carve-out Co Data to Carve-out Co upon request together with such other information as Carve-out Co may reasonably require, including, without limitation, financial and operational data, in order for it to carry on business in the same manner that it has prior to the date of this Agreement but subject always to the provisions hereof.
- 25.4 The Parties hereto undertake that:
- (A) where they request Carve-out Co Data or other data as contemplated in clause 25.3 from another Party, they shall process it or procure that it is processed strictly in accordance with the relevant Party's lawful instructions from time to time, and in accordance with all Applicable Law, and shall not act on any instructions other than those of the properly designated representative or representatives of the Party who has provided such data;
  - (B) if it becomes necessary to transfer Carve-out Co Data or other data as contemplated in clause 25.3 from one location to another within their own organisations, that transfer shall be undertaken in accordance with all Applicable Law, and with appropriate security measures being implemented so as to ensure the integrity of such data; and
  - (C) they will assist with all subject information requests which may be received from data subjects of the Carve-out Co Data contained in the Carve-out Co Data made in accordance with and pursuant to any data subjects' rights under any applicable data protection laws, including rules related to customer proprietary network information, and to do all things reasonably necessary to enable Carve-out Co to comply with such requests.
- 25.5 CWC agrees to rectify any loss of Carve-out Co Data caused by CWC, CWC Inc., any member of the CWC Group or any officer, director, employee or agent thereof in accordance with the reasonable instructions of Carve-out Co.

## **26. Confidentiality**

26.1 Each Party shall treat as confidential all information which relates to:

- (A) the provisions of this Agreement;
- (B) the negotiations relating to this Agreement; or
- (C) Carve-out Co and/or the Business.

26.2 Each Party shall:

- (A) not use any such confidential information other than for the purpose of conducting the Business; and
- (B) procure that any person to whom such confidential information is disclosed by it complies with the restrictions set out in this clause 26 as if such person were a Party to this Agreement.

26.3 Notwithstanding the previous provisions of this clause 26, any Party may disclose any such confidential information:

- (A) to the extent required by law or any Governmental Authority;
- (B) to the extent required by any securities exchange or regulatory or governmental body to which that Party (or a holding company of that Party) is subject, wherever situated, including (amongst other bodies) the U.S. Securities and Exchange Commission, the U.K. Financial Services Authority, the London Stock Exchange or The Panel on Takeovers and Mergers of the U.K., whether or not the requirement for information has the force of law;
- (C) to its professional advisers, auditors and bankers provided they have a duty to keep such information confidential; or
- (D) to the extent the information has come into the public domain through no fault of that Party.

26.4 Notwithstanding the previous provisions of this clause 26, a Party may disclose confidential information to the extent and persons reasonably required to provide Services and perform its obligations or exercise its rights under this Agreement where such information is directly requested and the recipient undertakes to keep the information strictly confidential as if such person were a Party to this Agreement.

26.5 The restrictions contained in this clause 26 shall continue to apply to each Party without limit in time.

## 27. Notices

27.1 A notice under this Agreement shall only be effective if it is in writing. Emails are permitted.

27.2 Notices under this Agreement shall be sent to a Party at its address or number and for the attention of the individual set out below:

<b>Party and title of Address individual</b>	<b>Address</b>	<b>Facsimile no</b>	<b>Email address</b>
Cable & Wireless Communications Plc (Attention: General Counsel)	2nd Floor 62-65 Chandos Place, London, United Kingdom, WC2N 4HG, UK	+44 (0)20 7240 1450	Belinda.bradberry@cwc.com
Cable & Wireless Communications, Inc. (Attention: General Counsel)	1 Alhambra Plaza, 10th Floor Coral Gables, FL 33134, USA	N/A	Belinda.bradberry@cwc.com
CWC New Cayman Limited (Attention: Directors)	Walkers Corporate Limited, Cayman Corporate Centre, 27 Hospital Road, George Town, Grand Cayman KY1-9008, Cayman Islands	+1 345 949 7886	Brendan@columbus.co

provided that a Party may change its notice details on giving notice to the other Parties of the change in accordance with this clause. That notice shall only be effective on the date falling five clear Business Days after the notification has been received or such later date as may be specified in the notice.

## 28. Receipt of notices

28.1 Any notice given under this Agreement shall, in the absence of earlier receipt, be deemed to have been duly given as follows:

- (A) if delivered personally, on delivery;
- (B) if sent by first class inland post, two clear Business Days after the date of posting;
- (C) if sent by airmail, six clear Business Days after the date of posting; and

(D) if sent by e-mail, when despatched.

- 28.2 Any notice given under this Agreement outside Working Hours in the place to which it is addressed shall be deemed not to have been given until the start of the next period of Working Hours in such place.

## **29. Choice of governing law**

This Agreement, and any matter, claim or dispute arising out of or in connection with this Agreement, whether contractual or non-contractual, is to be governed by and construed in accordance with the laws of the State of New York, U.S.A, without regard to provisions thereof on the conflicts of law. The provisions of the United Nations Convention for the International Sale of Goods shall not be applicable to this Agreement.

## **30. Jurisdiction**

- 30.1 Any proceeding, suit or action arising out of or in connection with this Agreement, whether contractual or non-contractual, or the negotiation, existence, validity or enforceability of this Agreement ("**Proceedings**") shall be brought only in, and the Parties hereby irrevocably consent to the jurisdiction of, the United States District Court for the Southern District of New York, if a basis for federal court jurisdiction is present, and otherwise, in the state courts of the State of New York located in the borough of Manhattan.
- 30.2 Each Party waives (and agrees not to raise) any objection, on the ground of forum non conveniens or on any other ground, to venue with respect to any Proceedings brought in the aforementioned courts. Each Party also agrees that a judgment against it in Proceedings brought in the aforementioned courts shall be conclusive and binding upon it and may be enforced in any other jurisdiction.
- 30.3 Each of the Parties irrevocably consents to service of process out of the aforementioned courts.
- 30.4 THE PARTIES HEREBY IRREVOCABLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THEIR RESPECTIVE RIGHTS TO TRIAL BY JURY FOR ANY CLAIM OR CAUSE OF ACTION BASED UPON, ARISING OUT OF, OR RELATED TO THIS AGREEMENT, IN ANY ACTION, PROCEEDING OR LAWSUIT BROUGHT BY EITHER PARTY AGAINST THE OTHER PARTY, WHETHER ARISING IN CONTRACT, TORT, OR OTHERWISE.

## **31. Assignment**

This Agreement shall be binding on and enure for the benefit of each Party's successors and assigns. No Party shall assign, or declare any trust in favour of a third party over, all or any part of the benefit of, or its rights or benefits under, this Agreement, provided that each of CWC and CWC Inc. shall have the right to assign this Agreement, upon written notice to Carve-out Co, if such assignment is to a member of the CWC Group provided

that such assignment shall not relieve CWC or CWC Inc. (as applicable) of any of its obligations under this Agreement.

**32. No Third-Party Beneficiaries**

This Agreement is entered into solely between, and may be enforced only by, the Parties and their permitted successors and assigns. This Agreement shall not be deemed to create any rights in third parties, including suppliers, customers and owners of a Party, or to create any obligations of a Party to any such third parties.

**33. Severability**

If any provision of this Agreement is determined to be unenforceable, invalid or in breach of any law by any tribunal, public body or court of competent jurisdiction for any reason whatsoever, the unenforceability or invalidity of such provision shall not affect the enforceability or validity of the remaining provisions of this Agreement, and the Parties shall negotiate in good faith so as to replace such unenforceable, invalid or illegal provision with an enforceable, valid and legal provision which, as nearly as practically possible, has the same effect as the unenforceable, invalid or illegal provision.

**34. Further assurances**

- 34.1 The Parties shall take any actions and execute any other documents that may be necessary or desirable to the implementation and consummation of this Agreement or that may be reasonably requested by any other Party hereto. Each Party will cooperate with the other Parties and provide any assistance reasonably requested by any other Party to effectuate the terms of this Agreement.

**35. Entire agreement and amendment**

- 35.1 This Agreement constitutes the entire agreement between the Parties relating to the subject matter of this Agreement.
- 35.2 This Agreement may only be amended in writing signed by each of the Parties.

**36. Counterparts**

- 36.1 This Agreement may be executed in any number of counterparts, and by the Parties on separate counterparts, but shall not be effective until each Party has executed at least one counterpart.
- 36.2 Each counterpart shall constitute an original of this Agreement, but all the counterparts shall together constitute one and the same instrument.



**Schedule 1**  
**Personnel**

- 1.1 The Parties intend and believe that neither the provision of any Services and/or any of the other matters contemplated by this Agreement nor the termination of this Agreement shall constitute a transfer of an undertaking for any purposes, nor shall such provision or cessation of provision result in any person who is, at the date of this Agreement, any employee of any Party (or a subsidiary of that Party) becoming an employee of another Party (or a subsidiary of another Party) by virtue of their providing any of the Services under this Agreement. Rather, it is intended that all employees of each Party (and their relevant subsidiaries) providing services pursuant to this Agreement (such employees together being the "**Applicable Employees**") engaged in the provision of any of the Services under this Agreement shall remain the employees of such Party (or subsidiary) for the duration of this Agreement and on or after (without limitation) its expiry.
- 1.2 In the event that any Applicable Employee becomes or alleges that he has become by operation of Applicable Law or otherwise an employee of another Party or subsidiary of another Party (other than his then-employer) by virtue of his providing any of the Services under, and/or any of the other matters contemplated by, this Agreement, then:
- (A) the provisions of this Schedule 1 shall apply; and
  - (B) subject to paragraph 1.3, that Applicable Employee's employer may terminate the employment of such person (each such person being a "**Redundant Employee**").
- 1.3 Prior to a Party (or subsidiary of a Party) terminating the employment of any Redundant Employee, that Party shall give each Party (and subsidiary of a Party) to whom that employee has provided any of the Services under this Agreement not less than 5 Business Days' written notice of the proposed termination date (the "**Termination Date**"), in order to enable that other Party or Parties (or relevant subsidiary or subsidiaries of such other Party or Parties) to:
- (A) offer that Redundant Employee employment under a new contract of employment to take effect immediately upon such Termination Date; and
  - (B) ensure that the offer to be made will be such that none of the terms and conditions of the new contract will differ from the corresponding provisions of that Redundant Employee's contract immediately before the transfer or alleged transfer of employment.
- 1.4 The Parties agree that any termination of the employment of a Redundant Employee shall be by reason of redundancy.
- 1.5 CWC and CWC Inc. shall indemnify Carve-out Co against any expenses, losses, fees, costs and/or liabilities arising out of:

- (A) the transfer of employment of a Redundant Employee to Carve-out Co;
  - (B) the Redundant Employee's employment with Carve-out Co; and
  - (C) the termination of a Redundant Employee's employment by Carve-out Co.
- 1.6 Carve-out Co shall indemnify CWC and each other CWC Group member (including CWC Inc.) against any expenses, losses, fees, costs and/or liabilities arising out of:
- (A) the transfer of employment of a Redundant Employee to a CWC Group member;
  - (B) the Redundant Employee's employment with a CWC Group member; and
  - (C) the termination of a Redundant Employee's employment by a CWC Group Member.

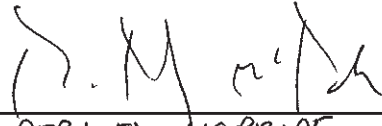
**Schedule 2**  
**Carve-out Co Officers and Directors**

<b>No.</b>	<b>Employee Name</b>	<b>Title</b>
<b>Carve-out Co</b>		
1.	John Risley	Director
2.	Brendan Paddick	Director
3.	Alan Buhl	Officer

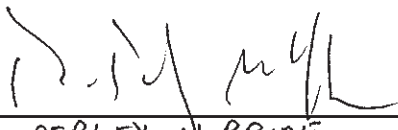
SIGNATURES

IN WITNESS of which this Agreement has been executed and delivered on the date which first appears on page 1 of this Agreement

**CABLE & WIRELESS COMMUNICATIONS  
PLC**

By   
 Name: PERLEY MCBRIDE  
 Title: DIRECTOR

**CABLE & WIRELESS COMMUNICATIONS,  
INC.**

By   
 Name: PERLEY MCBRIDE  
 Title: DIRECTOR

**CWC NEW CAYMAN LIMITED**

By: \_\_\_\_\_  
 Name:  
 Title:

SIGNATURES

IN WITNESS of which this Agreement has been executed and delivered on the date which first appears on page 1 of this Agreement


**CABLE & WIRELESS COMMUNICATIONS  
PLC**

By \_\_\_\_\_  
Name:  
Title:

**CABLE & WIRELESS COMMUNICATIONS,  
INC.**

By \_\_\_\_\_  
Name:  
Title:

**CWC NEW CAYMAN LIMITED**

By:   
Name: **BRENDAN PADDICK**  
Title: **DIRECTOR**