

AGREED FORM DOCUMENT

DATED _____ 2011

THE TREASURER OF THE COMMONWEALTH OF THE
BAHAMAS

and

CWC BAHAMAS HOLDINGS LIMITED

and

THE BAHAMAS TELECOMMUNICATIONS COMPANY LIMITED

and

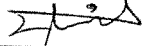
CABLE & WIRELESS (WEST INDIES) LIMITED

SHAREHOLDERS' AGREEMENT

relating to

THE BAHAMAS TELECOMMUNICATIONS COMPANY LIMITED

Acknowledged as being in the Agreed Form by:



for and on behalf of the Treasurer of the
Commonwealth of The Bahamas



for and on behalf of CWC Bahamas Holdings
Limited

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THIS AGREEMENT is made on

2011

BETWEEN:

- (1) **THE TREASURER OF THE COMMONWEALTH OF THE BAHAMAS**, a Corporation Sole constituted and existing by virtue of the Ministry of Finance Act (Chapter 23, Statute Laws of The Bahamas 2000 Revised Edition) and currently located at Water Tower Place, North Building, East Street P. O. Box N 7524, Nassau, New Providence, the Commonwealth of The Bahamas (the "**Government**");
- (2) **CWC BAHAMAS HOLDINGS LIMITED**, an international business corporation limited by shares incorporated under the laws of the Commonwealth of The Bahamas, with registered number 161078B and whose registered office is at Fort Nassau Centre, Marlborough Street, P.O. Box N-4875, Nassau, New Providence, the Commonwealth of The Bahamas ("**CWC**");
- (3) **THE BAHAMAS TELECOMMUNICATIONS COMPANY LIMITED**, a private company limited by shares incorporated in The Commonwealth of The Bahamas further information about which is contained in Part 1 of Schedule 1 (the "**Company**"); and
- (4) **CABLE & WIRELESS (WEST INDIES) LIMITED**, a company limited by shares and incorporated under the laws of England and Wales with registered number 11116 and whose principal place of business is at 3rd Floor, 26 Red Lion Square, London WC1R 4HQ, United Kingdom (the "**Guarantor**").

WHEREAS:

- (A) The Company has an authorised share capital of B\$254,664,000 divided into 254,664,000 ordinary shares of B\$1.00 each of which 254,664,000 are in issue as fully paid Shares.
- (B) The Government and CWC each hold the number of ordinary shares in the Company and resultant proportionate interest set out in Part 2 of Schedule 1.
- (C) The Government and CWC are entering into this Agreement to set out the terms governing their relationship as shareholders of the Company.
- (D) The Guarantor has agreed to guarantee the obligations of CWC under this Agreement.

IT IS AGREED as follows:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement unless the context otherwise requires:

"Accounting Principles"

means the accounting principles and policies, which shall be in accordance with IFRS and consistent with those applied to the CWC Group, as shall be adopted by the Company from time to time;

"Actuarial Valuation"

means a formal actuarial assessment undertaken by the Plan Actuary (with an effective date of a calendar year-end) of the assets and liabilities of the Pension Plan with a view to determining and reporting on (1) the actuarial position of the Pension Plan, and (2) the contributions due to be paid to it on a monthly basis both by the Company and from the Feeder Trust during the next-following complete Contribution Year (excluding, for the avoidance of doubt, the amortised impact of any Headcount Reduction Cost that has been determined to exist within the Pension Plan);

“Agreement”

means this agreement and all schedules and appendices to this agreement;

“Annualised Valuation Sum”

means the aggregate of the Legacy Contribution Payments due as the result of an Actuarial Valuation in respect of the twelve-month period comprising the next-following Contribution Year;

“Applicable Law”

means any law, regulation, directive, decree, policy and other legislation or enactment whatsoever in each case having the force of law or any requirement, decision of or contractual obligation owed to an applicable regulatory authority;

“Articles”

means the Company’s articles of association in the agreed form and as may be amended from time to time;

“Audit Committee”

has the meaning attributed to it in paragraph 1 of Schedule 2;

“Audit Committee Terms of Reference”

means the terms of reference of the Audit Committee as set out in Schedule 2;

“Bahamian Citizen”

means a citizen of The Bahamas;

“Bahamian Companies Legislation”

means The Bahamas’ Companies Act 1992;

“BISX”

means The Bahamas International Securities Exchange or any successor exchange of The Bahamas International Securities Exchange in The Bahamas;

“BISX Public Offer Notice”

means a notice in writing given by the Government to the Company in accordance with either or both of clauses 18.14.1(a) and 18.14.1(b) requesting that the Company procure that a BISX Share Admission occurs in relation to a specified number of the Shares held by Governmental Bodies;

“BISX Share Admission”

means the admission to trading on BISX of Shares held by Governmental Bodies following a BISX Public Offer Notice so as to enable the Government to:

- (a) offer for sale and/or transfer freely and without restriction; and/or
- (b) procure that any Governmental Body or Bodies holding Shares offer for sale and/or transfer freely and without restriction,

such number of Shares to Eligible Investors;

“Board”

means the Company’s board of directors or any duly appointed committee of it;

“Budget”

means a budget in respect of the Group for a particular Financial Year in substantially the same format as the budget for the Company in existence at the Effective Date;

“Business”

means the business of providing mobile, fixed, internet and data communications services (including, without limitation, the Licensed Services) across the Territory (and such other territories where the Company carries on such business at the time of this Agreement) and such other businesses as are, subject to clause 8.3.3, carried on by the Group from time to time in accordance with the Business Plan for the time being;

“Business Plan”

means a business plan for the Group relating to at least the next three Financial Years in substantially the same format as the First Business Plan;

“Cash”

means the consolidated cash and cash equivalents owned by the Group in hand or at bank (in any currency, and whether on deposit or in current account and including, in each case, interest accrued thereon up to and including the relevant date), and the Group’s marketable (being liquid, realisable) securities and other liquid investments, in each case as at the close of business on the relevant date, but excluding any Restricted Cash as at the close of business on the relevant date, all such amounts to be determined by the Group’s reconciled accounting records (and therefore taking account of, inter alia, unrepresented or uncleared cheques issued by the Group prior to the relevant date and unrepresented or uncleared cheques in favour of the Group received prior to the relevant date);

“CEO”

means the chief executive officer from time to time of the Company;

“Certificate”

has the meaning attributed to it in clause 20.7.6;

“CFO”

means the chief financial officer from time to time of the Company;

“Chairman”

means the chairman from time to time of the Board, or the relevant committee, as the context requires;

“Change of Control or Ownership”

means if:

- (a) any person (together, if applicable, with any Persons Acting in Concert with any such person) acquires any shares, securities or other interest whatsoever in CWC; or
- (b) any person (together, if applicable, with any Persons Acting in Concert with any such person) acquires a Controlling Interest in CWC, or in any company (except for CWC plc) which, directly or indirectly, has a Controlling Interest in CWC,

unless, in each case:

- (i) such person (and any Persons Acting in Concert with such person) are wholly-owned subsidiaries of CWC plc; or

- (ii) such acquisition is part of a wider sale by the CWC Group of all or a material part of its Caribbean or wider operations;

“Comparable Guarantor”

means a Qualifying CWC Group Member which is of similar (or better) financial standing as the Guarantor;

“Competing Business”

means the business of providing mobile, fixed, internet and data communications services in the Territory as carried on by the Company under a Licence as at the Effective Date;

“Confidential Information”

has the meaning attributed to it in clause 28.1;

“Contractual Documents”

has the meaning attributed to it in clause 31.1.1;

“Contribution Year”

means a period beginning on 1 June in any calendar year and ending on 31 May in the next-following calendar year;

“Controlling Interest”

- (a) means the ownership or control (directly or indirectly) of (as applicable):
- (i) more than 50% of the voting share capital of the relevant undertaking; or
 - (ii) a partnership interest of more than 50%; or
- (b) the right to appoint or remove director(s) or, as applicable, general or managing partner(s) of the relevant undertaking together holding a majority of the voting rights at meetings of the board, or, as applicable partnership meetings on all, or substantially all, matters;

“COO”

means the chief operating officer from time to time of the Company;

“Current Salary Method”

means the Current Unit Method described in paragraph 3.8 of version 2.1 of the UK Board for Actuarial Standards' Actuarial Guidance Note GN26, 'Pension Fund Terminology';

“CWC Directors”

means the Company's directors appointed by CWC from time to time;

“CWC Group”

means:

- (a) CWC;
- (b) any direct or indirect parent company of CWC and any direct or indirect subsidiary of CWC or of any direct or indirect parent company of CWC; and
- (c) any partner in any partnership having any interest, direct or indirect, in CWC;

other than any Group Member, in each case for the time being;

“CWC Group Member”

means any member of the CWC Group;

“CWC plc”

means Cable & Wireless Communications plc, a public limited company registered in England and Wales with company number 7130199 and whose registered office is at 3rd Floor, 26 Red Lion Square, London WC1R 4HQ;

“CWC plc’s Market Capitalisation”

means CWC plc’s market capitalisation, being CWC plc’s share price multiplied by the number of shares CWC plc has in issue;

“CWC Support Services Agreement”

means the know-how and special projects agreement and trade mark licence (in the agreed form) between CWIHQ and the Company;

“CWI Caribbean Limited”

means CWI Caribbean Limited, a company registered and incorporated in Barbados with its registered office at Windsor Lodge, Government Hill, St. Michael, Barbados;

“CWIHQ”

means Cable & Wireless International HQ Limited, a company incorporated in England and Wales with registered number 5921847 of 3rd floor, 26 Red Lion Square, London WC1R 4HQ;

“DC Conversion Exercise”

means a formal offer to cancel a member’s rights under the Pension Plan and substitute replacement rights in the New DC Plan in their stead, in return for an incentive payment (from the Feeder Trust but otherwise in such form as may in any particular case be made available) expressed as such monetary amount and calculated on such basis as the Government and the Company may from time to time agree;

“Declaration of Trust”

means the declaration of trust establishing and governing the Feeder Trust in the form set out in Schedule 7;

“Deed of Adherence”

means an agreement in the agreed form as set out in Schedule 3;

“Deemed Transfer Notice”

has the meaning attributed to it in clause 20.3;

“Default”

has the meaning attributed to it in clause 20.1;

“Defaulting Party”

has the meaning attributed to it in clause 20.1;

“Deputy Chairman”

means the deputy chairman of the Board from time to time;

“Directors”

means the Company’s directors (and the term “**Director**” means any one of them);

“Discontinuance Basis”

means the basis that:

- (a) membership of the Pension Plan shall be treated as having terminated on, and Plan Earnings shall be calculated by reference to, the effective date of the Actuarial Valuation or, in the case of the Termination Lump Sum, as at the effective date of such calculation;
- (b) the vesting schedule set out in Section VIII of the Pension Rules is applicable in full; and
- (c) the Company’s consent for the purposes of Paragraph B of Section IV of the Pension Rules shall be treated as not having been given, save in respect of any member of the Pension Plan who at the effective date of the Actuarial Valuation (or, in the case of the Termination Lump Sum, as at the effective date of such calculation) would – were he to have left service as and from that date – have had the right under the Industrial Agreements to an immediate unreduced pension;

“EBITDA”

means the earnings before interest, taxes, depreciation and amortisation of the relevant company, which shall be calculated by reference to the consolidated audited accounts for the Group for the immediately preceding Financial Year;

“Effective Date”

means the date of execution of this Agreement;

“Eligible Investor”

means:

- (a) a Bahamian Citizen; or
- (b) a company registered under the Bahamian Companies Legislation, in which not less than 60% of its shares are beneficially owned by a Bahamian Citizen or Bahamian Citizens (having regard for this purpose to clause 1.3.4); or
- (c) any other person permitted by Applicable Law or the rules of BISX from time to time to invest in obligations of companies listed on BISX;

“Encumbrance”

means any interest of any person including, without prejudice to the generality of the foregoing, any fixed or floating security, debenture, mortgage, charge, assignment, pledge, deposit by way of security, bill of sale, lease, hire-purchase, credit-sale and other agreements for payment on deferred terms, right to acquire, option, lien or right of pre-emption, security interest, title retention or other right of retention or any other security agreement or arrangement whatsoever;

“Equity Proportions”

means the respective proportions in which the Shareholder Parties hold the issued share capital of the Company from time to time which will initially be, in the case of the Government, 49% and, in the case of the CWC, 51% as set out in Part 2 of Schedule 1;

“Established Telecommunications Company”

means an operating company which, together with any direct or indirect parent company of such company and any direct or indirect subsidiary of such company or of any such direct or indirect parent company:

- (a) is the holder of Telecommunications Licences in at least 3 jurisdictions other than The Bahamas;
- (b) has at least 1 million customers or subscribers, in aggregate; and
- (c) either has net assets (per its latest audited financial statements), or a market capitalisation, of at least US\$750,000,000;

“Excess Shares”

has the meaning attributed to it in clause 18.7.2;

“Existing CWC Agreement”

means the agreement between the Company and the Guarantor dated 23 May 2002, in relation to global telecommunications services;

“Expert”

has the meaning attributed to it in clause 20.6.1;

“Facility Agreement”

means the term loan facility agreement dated 18 November 2005 between the Company and SG Hambros Bank & Trust (Bahamas) Limited, Citibank N.A. Nassau, Bahamas Branch, Scotiabank (Bahamas) Limited and FirstCaribbean International Bank Bahamas Limited;

“Feeder Trust”

means the trust to be established by the Declaration of Trust in order to permit the Government to meet its payment obligations towards the Pension Plan in an indirect manner, the sole beneficiary of which trust (save to the extent that the Government is a residual beneficiary and the Company has the right directly to enforce the Government's obligations) will be the Pension Plan;

“Fifth Anniversary”

means the fifth anniversary of the Effective Date;

“Fiftieth Anniversary”

means the fiftieth anniversary of the Effective Date;

“Financial Indebtedness”

means, as at the close of business on the relevant date, all borrowings and other financial indebtedness including any overdraft, acceptance credit or similar facilities, loan stocks, bonds, debentures, notes, debt or inventory financing, finance leases or sales and lease back arrangements, any net position in derivative financial instruments, any other arrangements the purpose of which is to borrow money and all interest accrued thereon to the relevant date, but excluding normal trade credit;

“Financial Secretary”

means the Bahamian Financial Secretary from time to time;

“Financial Year”

means a financial period of 12 months of the Company;

“First Business Plan”

means the business plan in relation to the Company, in the agreed form, in respect of the first five years following the Completion Date;

“Government Directors”

means the Company’s directors appointed by the Government from time to time;

“Governmental Body”

means any governmental body (corporate or otherwise), department, board, authority or agency of The Bahamas, or any body corporate or partnership controlled by the Government excluding for the avoidance of doubt URCA and any other regulatory body;

“Group”

means the Company and the subsidiaries of the Company, if any, from time to time;

“Group Member”

means any member of the Group;

“Headcount Reduction Cost”

means the net increase in liabilities (if any) of the Pension Plan as the Plan Actuary shall determine (and then notify to the Company, the Pension Trustee and the Intermediate Trustee), on the basis of the assumptions utilised for the most recently-concluded Actuarial Valuation, of any Headcount Reduction Exercise undertaken by the Company, and in respect of which no prior payment shall have been received by the Pension Trustee from the Company PROVIDED ALWAYS THAT if at the effective date of such Headcount Reduction Exercise no Actuarial Valuation has been concluded, the assumptions to be used shall be those utilised for the Actuarial Valuation being undertaken as at the Effective Date (whenever concluded);

“Headcount Reduction Exercise”

means an exercise or combination of exercises, other than pursuant to the Voluntary Workforce Restructuring Plan, that collectively bring about, within any rolling twelve-month period, either:

- (a) the Redundancy of fifteen or more of the Company’s employees who are active members of the Pension Plan, whatever the associated Headcount Reduction Cost; or
- (b) Redundancies (of whatever number of the Company’s employees) that result in a Headcount Reduction Cost in excess of B\$1,000,000;

“IFRS”

means the accounting standards issued by the International Accounting Standards Board from time to time;

“Industrial Agreements”

means the industrial agreements in place from time to time between the Company and BCPOU or, as the case may be, BCPMU (and/or such other recognised trade union or unions as with whom from time to time agreements of such a nature may be in place);

“Initial Contribution”

means the sum of B\$39,000,000;

“Insolvency Event”

means any of the following in respect of a Relevant Person:

- (a) any Relevant Person is unable, or admits in writing its inability, to pay any Financial Indebtedness as it falls due;
- (b) any corporate action, legal proceedings or other procedure or step is taken by the Relevant Person in relation to:
 - (i) the suspension of payments, winding-up, dissolution, administration or reorganisation (by way of a voluntary arrangement, scheme of arrangement or otherwise) of any Relevant Person (otherwise than in the course of a solvent liquidation or solvent reorganisation or solvent restructuring of the Relevant Person); or
 - (ii) a composition, compromise, assignment or arrangement with, or for the benefit of, any creditor of any Relevant Person;
 - (iii) the appointment of a liquidator (other than in respect of a solvent liquidation of any Relevant Person), receiver, administrative receiver, administrator or other equivalent officer in respect of any Relevant Person or any of its assets (which shall include any Shares held by any Relevant Person); or
- (c) a liquidator (other than in respect of a solvent liquidation of any Relevant Person), receiver, administrative receiver, administrator or other equivalent officer is appointed in respect of any Relevant Person or any of its assets (which shall include any Shares held by any Relevant Person) by a third party, where such appointment:
 - (i) is not bona fide disputed and steps are not taken for the appointment to be removed within 21 days of the Relevant Person becoming aware of such appointment; or
 - (ii) is bona fide disputed and steps for such appointment to be removed are taken within 21 days of the Relevant Person becoming aware of such appointment and such steps are unsuccessful in removing the appointment;
- (d) any procedure or step analogous to any of the foregoing is taken in any jurisdiction;

“Intermediate Trustee”

means the first trustee of the Feeder Trust and its successors in office as the trustee or trustees of the Feeder Trust for the time being;

“Key Employee”

means any person who is a director, officer or employee who by reason of that position and in particular his seniority and expertise or knowledge of Confidential Information, clients, customers or contracts of the Group is likely to cause damage to the Group if he were to cease to be involved in the Group and become employed by a competitor of the Group;

“Legacy Contribution Arrangement”

means the arrangements envisaged by (and to be implemented in accordance with) clause 17.3 and to be set out in the Declaration of Trust, whereby the Government-funded Feeder Trust will meet the ongoing costs of accrual and any deficit repair within the Pension Plan

(relating in each case to all of its members) save to the extent of 10% of the Plan Earnings of the Pension Plan's active members from time to time and associated expenses;

“Legacy Contribution Payment”

has the meaning attributed to it by the Feeder Trust, being the amount in respect of any given month that the Feeder Trust is obligated by the Declaration of Trust to pay to the Pension Plan;

“Legacy Lump Sum”

means such sum as the Government and CWC may from time to time agree reflects the present value of the aggregate Legacy Contribution Payments that would fall due were the Legacy Contribution Arrangement not to terminate until the last active member of the Pension Plan had left the Company's employment and drawn or otherwise taken his benefits from it;

“Licence”

means any licences granted by the Utilities Regulation and Competition Authority or the Grand Bahama Port Authority or their successors or by any other regulatory body in The Bahamas or by any Governmental Body;

“Licensed Services”

means services provided from time to time, the provision of which require a Licence;

“Licensed Systems”

means communications systems used from time to time to provide Licensed Services;

“LIME Support Services Agreement”

means the agreement in respect of the provision of support services to the Company (in the agreed form) between CWI Caribbean Limited and the Company;

“Listing”

means the admission to trading, listing, registration or quotation of all or any of the Shares on a Relevant Exchange;

“Management Committee”

has the meaning attributed to it in the Pension Rules;

“Material”

means, where used as a capitalised term only in each of clauses 5.10.1, 8.3.3, 8.3.6, 8.3.7, 8.3.8, 8.3.9 and 8.3.10, material in the context of the business of the Group taken as a whole, and **“Materially”** shall be construed accordingly;

“Memorandum”

means the Company's memorandum of association in the agreed form as may be amended from time to time in accordance with this Agreement;

“Minority Shareholder”

means a Shareholder (other than the Government, any other Governmental Body or any CWC Group Member) who holds less than 15% of the Shares from time to time;

“Net Debt”

means the amount, if any, by which the aggregate Financial Indebtedness of the Group exceeds the Cash;

“New DC Plan”

means pension arrangements on a defined contribution basis, the substance of which shall be broadly comparable to those set out in Schedule 6 (and provided always that, the arrangements may be amended by the Company from time to time);

“Notice of Intention”

has the meaning attributed to it in clause 18.6;

“Offer Notice”

has the meaning attributed to it in clause 18.5;

“Other Shareholder Party”

has the meaning attributed to it in clause 18.2;

“Parties”

means the Company (unless the context dictates otherwise), CWC, the Government and the Guarantor and their respective successors and permitted assigns (and **“Party”** shall be construed accordingly), including any Shareholder who becomes a Shareholder by acceding to this Agreement in accordance with the terms hereof;

“Pension Plan”

means the Bahamas Telecommunications Corporation Retirement Plan for Full-Time Employees, as presented in the Pension Rules (as subsequently supplemented by the provisions of the Pensions Deed);

“Pension Rules”

means the rules governing the operation of the Pension Plan from time to time in force;

“Pension Trustee”

means Ansbacher (Bahamas) Limited and its successors and assigns from time to time as trustee of the Pension Plan;

“Pensions Deed”

means the deed dated 31 December 2002, entered into between the Company and the Pension Trustee (and as may hereafter be varied from time to time, in accordance with its governing provisions and to the extent permitted by this Agreement), by which the Pension Trustee was appointed as the trustee of the Pension Plan;

“Persons Acting in Concert”

means persons who, pursuant to an agreement or understanding (whether formal or informal), actively co-operate through the acquisition by any of them of shares in a person to obtain a Controlling Interest in relation to that person, or agree to so co-operate;

“Plan Actuary”

means the actuary to the Pension Plan for the time being appointed, being the ‘Actuary’ for the purpose of the Pension Rules;

“Plan Earnings”

has the meaning attributed to it in the Pension Rules;

“Plan Expenses Payment”

means an amount equal to any charges, fees, taxes or expense payments (howsoever called but for the avoidance of doubt excluding any amount required to fund benefit payments to members) as at the relevant date:

- (a) which have been paid by the Pension Trustee from the assets of the Pension Plan; and
- (b) which the Plan Actuary has informed the Company have been so paid; but
- (c) in respect of which the Pension Plan has not yet been reimbursed by the Company;

“Plan Year”

has the meaning attributed to it in the Pension Rules;

“Point-of-Sale Deficit”

means such amount as the Plan Actuary shall determine, on the basis of the assumptions set out in Schedule 8 (which shall also be utilised for the Actuarial Valuation to be undertaken as at the Effective Date), to be the deficit in the Pension Plan (calculated on a Discontinuance Basis) as at the Effective Date, provided always that this amount shall be subject to a minimum of zero and a maximum of the Initial Contribution;

“Proceedings”

has the meaning attributed to it in clause 35;

“Proposed Substitute”

has the meaning attributed to it in clause 16.1.2;

“Purchase Price”

has the meaning attributed to it in clause 18.4;

“Purchaser”

has the meaning attributed to it in clause 18.9;

“Qualifying CWC Group Member”

means:

- (a) CWC plc;
- (b) another CWC Group Member whose entire issued share capital is, directly or indirectly, legally and beneficially owned by CWC plc; or
- (c) such other CWC Group Member as the Government may approve in writing;

“Redundancy”

means the termination of service of an employee by the Company because of a reduction of the working force resulting from a change or discontinuance of some function of the operations of the Company;

“Regulatory Approvals”

means any approvals required by Applicable Law of any competent supranational, governmental or regulatory agencies or authorities to the relevant transaction, including, without limitation, the Utilities Regulation and Competition Authority;

“Relevant Business”

has the meaning attributed to it in clause 12.2.2;

“Relevant CWC Group Member”

means any CWC Group Member other than any CWC Group Member which (a) is an operating company; and (b) operates a telecommunications business in a single jurisdiction;

“Relevant Exchange”

means any equities market of or operated by London Stock Exchange plc, the New York Stock Exchange, NASDAQ, BIX and/or any other securities exchange which the Shareholder Parties may agree in writing;

“Relevant Governmental Body”

means any governmental body (corporate or otherwise), department, board, authority or agency of The Bahamas, or any body corporate or partnership wholly-owned by the Government excluding for the avoidance of doubt URCA and any other regulatory body;

“Relevant Person”

means CWC or any other CWC Group Member which is the owner of Shares or any person with, directly or indirectly, a Controlling Interest in CWC or such other CWC Group Member;

“Relevant Qualifying CWC Group Member”

means any Qualifying CWC Group Member other than any Qualifying CWC Group Member which (a) is an operating company; and (b) operates a telecommunication business in a single jurisdiction.

“Relevant Shares”

has the meaning attributed to it in clause 18.14.3(c);

“Remedy Period”

has the meaning attributed to it in clause 20.1.1;

“Reserved Matters”

has the meaning attributed to it in clause 8.2;

“Reserved Matter Request”

means a request in writing from CWC to the Government giving such details about the relevant Reserved Matter as would enable the Government to come to an informed decision about the matter in question;

“Restricted Cash”

means, as at the close of business on the relevant date, any cash, cash equivalents, marketable (being liquid, realisable) securities and other liquid investments, which are:

- (a) restricted in their use; or

- (b) not available for general operations or to satisfy current liabilities (including any monies ring-fenced for self-insurance purposes),

but not, for the avoidance of doubt, cash held as collateral pursuant to the terms of the Facility Agreement;

“Restricted Period”

means the period from the Effective Date until the earlier of:

- (a) two years after CWC or any CWC Group Member ceases to hold any Shares; and
- (b) two years after the termination of this Agreement in accordance with the terms hereof;

“Rules”

means the BIX Rules (as amended and replaced from time to time), the Securities Industry Act 1999, the Bahamian Companies Legislation and any other applicable securities legislation from time to time in force;

“Salary Increases”

means, in respect of any Plan Year, the sum of:

- (a) the annual average, calculated over the full term of the Industrial Agreements in force at the commencement of that Plan Year and expressed in percentage terms, of the increases in pensionable remuneration required to be paid by those Industrial Agreements to the Company’s employees (who are members of the Pension Plan) during such term; and
- (b) the Company’s budgeted allowance (in B\$) for merit-based increases to Pension Plan members’ Plan Earnings during that Plan Year, expressed as a percentage of those individuals’ aggregate level of Plan Earnings at the commencement of that Plan Year;

“Sale and Purchase Agreement”

means the Agreement dated [●] relating to the sale by the Government to CWC of 51% of the entire issued share capital of the Company;

“Sale Notice”

has the meaning attributed to it in clause 18.9;

“Secretary”

means the company secretary from time to time of the Company;

“Securities Commission”

means the Securities Commission of The Bahamas;

“Seller”

has the meaning attributed to it in clause 18.3;

“Seller’s Shares”

has the meaning attributed to it in clause 18.3;

“Services Agreements”

means the CWC Support Services Agreement and the LIME Support Services Agreement;

“Services Agreement Matter”

any decision to be taken by the Company in respect of the following under the Services Agreements:

- (a) material non-performance;
- (b) material dispute;
- (c) termination of either of the Services Agreements for due cause;
- (d) sub-contracting or assignment of any of the services provided by the CWC Group to a third party outside the CWC Group; or
- (e) the assignment of the benefit of such agreement to a third party outside the CWC Group;

“Shareholders”

means the Government and CWC and, subject always to clause 25, any person or persons to whom their Shares may be transferred pursuant to and in accordance with the provisions of this Agreement and/or the Articles (and **“Shareholder”** shall be construed accordingly);

“Shareholder Parties”

means CWC, the Government and any Shareholder who accedes to this Agreement in accordance with the terms hereof;

“Shares”

means shares in the Company’s capital;

“Special Project”

has the meaning attributed to it in the CWC Support Services Agreement;

“Specified Limits”

means, in the case of the CWC Support Services Agreement, US\$2,000,000 (excluding the fixed fee of 2% payable pursuant to such agreement) and, in the case of the LIME Support Services Agreement, an amount equal to (i) US\$10,000,000 (exclusive of any sums paid or payable to persons not being CWC Group Members) plus (ii) the aggregate amount of any sums paid or payable by any CWC Group Members (other than the Group Members) to any Group Member for services rendered by any Group Member, in each case in any twelve month period, and each shall be a **“Specified Limit”**;

“Substantial Economic and Operating Interest”

means an interest through which a person has the right to control at least 20% of the issued share capital or the voting rights or the right to receive at least 20% of the income on any distribution or the majority of assets on a winding up;

“Substitution Deed”

has the meaning attributed to it in clause 16.2.4;

“Substitution Event”

has the meaning attributed to it in clause 16.1;

“Substitution Notification”

has the meaning attributed to it in clause 16.1.2;

“Taxation” or “Tax”

means all forms of tax levy, duty, charge, deposit, contribution, withholding or holding by way of taxation whether chargeable and whether of The Bahamas or elsewhere and any interest, penalties, fines, surcharges, charges or costs relating thereto;

“Telecommunications Licence”

means any licence for the provision of telecommunications services to the public;

“Termination Lump Sum”

means such sum as the Government shall reasonably determine and that the Company shall approve, both parties relying on the advice of the Plan Actuary using the assumptions appropriate as at the effective date of such calculation, and using as its starting point the views of the Plan Actuary, to be the deficit in the Pension Plan (calculated on a Discontinuance Basis) as at the effective date of calculation, net of (1) any Company contributions due but unpaid and (2) any Company contributions that would have fallen due for payment during the remainder of the Contribution Year during which the calculation is undertaken;

“Territory”

means The Bahamas and such other territories as may be agreed from time to time by the Shareholders;

“The Bahamas”

means The Commonwealth of The Bahamas;

“Third Anniversary”

means the third anniversary of the Effective Date;

“Third Party Action”

means any action which may lead to:

- (a) any order made by a court of competent jurisdiction;
- (b) any order or decision made or given by a competent supranational, governmental or regulatory authority (other than the Utility Regulation and Competition Authority in the Bahamas) or agency (including any Governmental Body); or
- (c) any enactment of any legislative body,

which, if given may materially prohibit, restrict or adversely affect completion of any of the transactions contemplated by, or otherwise adversely affect or restrict any of the rights or obligations of any Shareholder Party contemplated by, made or arising under, this Agreement.

“Third Party Purchaser”

has the meaning attributed to it in clause 18.11;

“Top-Up Contributions”

means such additional contributions that may be required or (as the case may be) desired to be made in order that the Feeder Trust should have the funds to meet any balance of cost or other (ongoing or one-off) contribution, payment obligation or funding requirement to the trustee of the Pension Plan or otherwise to or in respect of the Pension Plan (whether under the governing documents of the Pension Plan or otherwise including without limitation under any current or future overriding law whether or not (in either case) such requirement is

currently in the contemplation of the parties) other than the amounts payable by the Company under clause 17.3.5;

“Total Transfer Condition”

has the meaning attributed to it in clause 18.4;

“Transfer Notice”

has the meaning attributed to it in clause 18.4;

“Trust Expenses Payment”

means an amount equal to any charges, fees, taxes or expense payments (howsoever called but for the avoidance of doubt excluding any amount payable to the trustee of the Pension Plan or otherwise required to fund benefit payments to members of the Pension Plan) as at the relevant date:

- (a) which have been paid by the Intermediate Trustee from the assets of the Feeder Trust; and
- (b) which the Intermediate Trustee has informed the Company have been so paid; but
- (c) in respect of which the Feeder Trust has not yet been reimbursed by the Company;

“Unremedied Default”

means a Default which is not remediable or is not made good during the relevant Remedy Period;

“Voluntary Workforce Restructuring”

means the proposed restructuring of the Company's workforce to be undertaken as soon as is reasonably practicable following the Effective Date and which is planned to be completed by the first anniversary of the Effective Date as set out in the Voluntary Workforce Restructuring Plan; and

“Voluntary Workforce Restructuring Plan”

means the plan, in the agreed form, outlining the terms of a voluntary workforce restructuring to be undertaken by the Company (as may be amended from time to time with the written consent of CWC and the Government).

1.2 Interpretation and Construction

1.2.1 In this Agreement, unless otherwise specified or the context otherwise requires:

- (a) words importing the singular only shall include the plural and vice versa;
- (b) words importing the whole shall be treated as including a reference to any part thereof;
- (c) words importing any gender shall include all other genders;
- (d) reference to a Schedule, recital or clause is to the relevant schedule, recital or clause of this Agreement;
- (e) reference to this Agreement or to any other document is a reference to this Agreement or to that other document as modified, amended, varied, supplemented, assigned, novated or replaced from time to time;
- (f) reference to any provision of law is a reference to that provision as modified or re-enacted from time to time, and any past statute or statutory

provision which that statute or provision has directly or indirectly replaced, except to the extent that any modification or re-enactment takes effect after the date of this Agreement and has the effect of increasing or extending any obligation or liability or otherwise adversely affects the rights of any Party; and

- (g) reference to any statutory provision is a reference to any subordinate legislation made under that provision from time to time, except to the extent that any such subordinate legislation which takes effect after the date of this Agreement has the effect of increasing or extending any obligation or liability or otherwise adversely affects the rights of any Party.

1.2.2 Headings used in this Agreement shall not affect its construction or interpretation.

1.2.3 Obligations and liabilities assumed by more than one person in this Agreement are assumed severally unless otherwise specified.

1.3 Other references

In this Agreement a reference to:

1.3.1 a document being "**in the agreed form**" means that it shall be in the form agreed by the Government and CWC on or before the date of the Sale and Purchase Agreement and signed or initialled by or on behalf of the Government and CWC;

1.3.2 "**in writing**" or "**written**" includes faxes and any non-transitory form of visible reproduction or words but excludes electronic mail and text messaging via mobile phone;

1.3.3 "**B\$**" means Bahamian dollars;

1.3.4 No share shall be deemed to be "**beneficially owned**" by a Bahamian Citizen if -

- (a) that Bahamian Citizen is in any way under an obligation to or otherwise may exercise any right attaching to that share at the instance of, any person who is not a Bahamian Citizen; or
- (b) that share is held jointly or severally with any person who is not a Bahamian Citizen,

save that, notwithstanding (a) and (b) above, a share shall be deemed to be beneficially owned by a Bahamian Citizen if:

- (i) it is owned by a Bahamian Citizen as trustee and every person having a beneficial interest in the trust is a Bahamian Citizen; or
- (ii) it is owned by a Bahamian Citizen as nominee for another who is a Bahamian Citizen and no one is in any way under any obligation to or otherwise may exercise any right attaching to the share at the instance of, or for the benefit of, any person who is not a Bahamian Citizen;

1.3.5 a "**business day**" means any day which is not a Saturday, a Sunday or a public holiday in The Bahamas or London;

1.3.6 a "**company**" includes any body corporate, wherever incorporated;

1.3.7 "**control**":

- (a) in relation to a company, means the power of a person to ensure that the affairs of such company are conducted in accordance with the wishes of that person, and a person shall be deemed to have control of a company if that person possesses or is entitled to acquire the majority of the issued

- share capital or the voting rights in that company or the right to receive the majority of the income of that company on any distribution by it of all of its income or the majority of its assets on a winding up; and
- (b) in relation to a partnership, means the right for a share of more than one half of the assets, or more than one-half of the income of such partnership;
- 1.3.8 the word “**including**” shall be construed as being by way of illustration or emphasis and not as a word limiting the generality of the preceding words;
- 1.3.9 a “**parent company**” means a company that owns at least 50% of the outstanding voting shares of each class or series of shares in another company;
- 1.3.10 a “**person**” includes any individual, firm, company, corporation, body corporate, government, state or agency of state, trust or foundation or partnership;
- 1.3.11 an “**executive**” of the Group includes a person not being an employee of the relevant Group Member (for instance, a secondee or consultant) who performs executive level duties for such Group Member;
- 1.3.12 a “**subsidiary**” means a company at least 50% of whose outstanding voting shares of each class or series of shares are owned by another company (provided that, for the purposes of this Agreement, neither the Company nor any subsidiary of the Company is to be regarded as a subsidiary of CWC);
- 1.3.13 a “**transfer**”, in relation to Shares, means the transfer of either or both of the legal and beneficial ownership in a Share and/or the grant of an option to acquire either or both of the legal and beneficial ownership in a Share, and the following shall be deemed (but without limitation) to be a transfer of a Share;
- (a) any direction (by way of renunciation or otherwise) by a Shareholder entitled to an allotment or issue of any Share that such Share be allotted or issued to some person other than itself;
- (b) any sale or other disposition of any legal or equitable interest in a Share (including any voting right attached thereto) and whether or not by the registered holder thereof and whether or not for consideration or otherwise whether or not effected by an instrument in writing; and
- (c) any grant of an Encumbrance over any Share;
- 1.3.14 an “**undertaking**” means a body corporate or partnership or an unincorporated association carrying on trade or a business with or without a view to profit. In relation to such an undertaking which is not a company, expressions in this Agreement appropriate to companies are to be construed as references to the corresponding persons, officers, documents or organs (as the case may be) appropriate to undertakings of that description; and
- 1.3.15 unless the context otherwise dictates, a reference to the Government or CWC holding Shares shall be deemed to respectively include any Governmental Body or any CWC Group Member so holding Shares or any interest in Shares and all such Shares shall be aggregated for the purpose of calculating the total percentage of issued share capital held and any reference to Shares shall be deemed to include an interest in such Shares.

1.4 **Exercise of powers of control**

Where any obligation in this Agreement is expressed to be undertaken or assumed by any Party, that obligation is to be construed as requiring the Party concerned to exercise all rights and powers of control over the affairs of any other person which it is (having regard without limitation to such Party’s rights and powers as a shareholder in the Company having the relevant rights set out in any Contractual Document) legally able to exercise (whether directly

or indirectly) in order to secure performance of the relevant obligation. Any reference in this Agreement to a Party undertaking an obligation "so far as it is able" shall be construed accordingly.

2 PURPOSE OF THE COMPANY

- 2.1 The Shareholder Parties agree that the business of the Group shall be conducted in the best interests of the Group and in accordance with the following intentions:
- 2.1.1 the Group will be the leading provider of mobile, fixed, internet and data communications services in The Bahamas and such other services as may, subject to clause 8.3.3, be specified in the Business Plan for the time being;
 - 2.1.2 the Group will become a major part of the overall regional operations and strategy of the CWC Group in the Caribbean, rather than merely an appendage to CWC Group's other operations in the region;
 - 2.1.3 the Group will operate in a manner so as to improve and expand upon the communications services existing in The Bahamas on the Effective Date;
 - 2.1.4 there will be a substantial Bahamian participation in the management of the Group; and
 - 2.1.5 the CWC Group will afford Bahamian Citizens meaningful opportunities to work within the regional operations of the CWC Group in the Caribbean.
- 2.2 Each Shareholder Party shall act in good faith and consult fully with each other on all matters materially affecting the development of the business of the Group.

3 EFFECTIVE DATE AND WARRANTIES BY THE COMPANY

- 3.1 This Agreement shall take effect upon the Effective Date.
- 3.2 The Company warrants to the other Parties as follows:
- 3.2.1 it has full power and authority to enter into and perform this Agreement and to enter into and perform any other agreements, documents and/or deeds required to be entered into by the Company in connection with and/or pursuant to this Agreement;
 - 3.2.2 this Agreement and any other agreements, documents and/or deeds to be entered into by the Company in connection with and/or pursuant to this Agreement, when executed, will constitute valid and binding obligations on the Company, enforceable in accordance with their respective terms; and
 - 3.2.3 the execution and delivery of, and the performance by the Company of its obligations under this Agreement, and the other agreements, documents and/or deeds to be entered into by the Company in connection with and/or pursuant to this Agreement, will not:
 - (a) result in a breach of any provisions of the memorandum or articles of association (or any other by-laws or constitutional documents) of the Company; or
 - (b) result in a breach of, or inconsistency with or otherwise contravene, any law, order, judgment or decree of any court or governmental agency to which the Company is a party or by which the Company is subject or bound.

4 CAPITAL AND FURTHER FINANCE

4.1 Further finance

4.1.1 Without prejudice to clause 8.3.2, if the Board considers at any time that the Business requires further finance, the Board will consider whether or not to approach the Group's bankers or other financial institutions or, in appropriate circumstances, to seek such further finance from the Shareholders. A Shareholder Party will not be obliged to provide any further finance unless it agrees on the amount and method of providing the finance. Subject as aforesaid, if and to the extent that the Shareholder Parties agree to provide any such further finance, the Shareholder Parties (or, in respect of CWC, any other Qualifying CWC Group Member and, in respect of the Government, any other Governmental Body as the case may be) shall contribute further finance to the Group in their Equity Proportions (whether by subscribing for Shares, stock or debentures or by way of loan or otherwise), at the same time and on the same terms.

4.1.2 If any Qualifying CWC Group Member acquires any Shares pursuant to clause 4.1.1 and subsequently ceases to be a Qualifying CWC Group Member, CWC shall procure that any Shares held by such Qualifying CWC Group Member shall promptly be transferred to CWC or any other Qualifying CWC Group Member.

4.2 Guarantees

Neither CWC, nor any CWC Group Member, nor the Government, nor any other Governmental Body shall be obliged to participate for the benefit of the Group in any guarantee, bond or financing arrangement with any bank or financial institution, whether as a guarantor or in any other capacity whatsoever. If and to the extent that the Shareholder Parties agree to participate in any such guarantee, bond or financing arrangement then, unless the Shareholder Parties agree otherwise, any liability or obligation to be assumed by the Shareholder Parties in relation to any such guarantee, bond or financing arrangement shall be borne in their Equity Proportions. Any such liability or obligation shall be several and not joint or joint and several, unless they agree otherwise. If a Shareholder Party incurs any liability in excess of their Equity Proportions or as otherwise agreed between the Shareholder Parties, that Shareholder Party shall be entitled to a contribution from the other Shareholder Parties to ensure that the aggregate liability of the Shareholder Parties is borne in their Equity Proportions or otherwise as agreed between the Shareholder Parties.

5 DIRECTORS AND MANAGEMENT

5.1 Supervision by the Board

Subject to each of clauses 7, 8 and 17, the Board shall be responsible for the overall direction, supervision and management of the Company, save that whilst and so long as the Government holds at least 15% of the Company's issued capital the Board shall not take any decision in relation to any of the Reserved Matters without the prior approval of the Government.

5.2 Board of Directors

The Board shall comprise a maximum number of seven Directors. The initial Board appointments at the Effective Date shall be four CWC Directors and three Government Directors.

5.3 Numbers of Directors

5.3.1 Subject to clauses 5.3.2, 5.3.3 and 25, and unless the Shareholder Parties otherwise agree, the Shareholder Parties may appoint up to, but not more than, at any one time, one Director for every 15% of the Company's issued share capital held by them.

- 5.3.2 Notwithstanding the provisions of clause 5.3.1, at any time whilst CWC holds more than 50% but less than 75% of the Company's issued share capital, it shall be entitled to appoint up to 4 CWC Directors.
- 5.3.3 Notwithstanding the provisions of clause 5.3.1, at any time whilst the Government and/or Governmental Bodies hold more than 24% but less than 30% of the Company's issued share capital, the Government and/or such Governmental Bodies shall be entitled to appoint two Government Directors.
- 5.3.4 For the purposes of clause 5.3:
- (a) any Shares held by any Governmental Body shall be aggregated with the Shares held by the Government for the purpose of calculating the Government's entitlement; and
 - (b) any Shares held by any other CWC Group Member shall be aggregated with the Shares held by CWC for the purpose of calculating CWC's entitlement.
- 5.3.5 Accordingly, as at the Effective Date, and based on the Equity Proportions, the Government shall be entitled to appoint three Directors and CWC shall be entitled to appoint four Directors.

5.4 **Appointment and removal of Directors, the Chairman and Deputy Chairman**

- 5.4.1 Subject to clause 5.3, so long as the Government is the registered holder or beneficial owner of at least 15% of the Company's issued share capital, it may at any time and on more than one occasion appoint a director to the Board to replace any Government Director who has resigned, and at any time and on more than one occasion remove any Government Director and appoint a replacement.
- 5.4.2 Subject to clause 5.3, so long as CWC is the registered holder or beneficial owner of at least 15% of the Company's issued share capital, it may at any time and on more than one occasion appoint a director to the Board to replace any CWC Director who has resigned, and at any time and on more than one occasion remove any CWC Director and appoint a replacement.
- 5.4.3 So long as there are CWC Directors, CWC may at any time and on more than one occasion appoint any one of the CWC Directors as Chairman, and at any time and on more than one occasion remove any such CWC Director as Chairman and appoint a replacement, provided there shall not be more than one Chairman at any one time.
- 5.4.4 So long as there are Government Directors, the Government may at any time and on more than one occasion appoint any one of the Government Directors as Deputy Chairman, and at any time and on more than one occasion remove any such Government Director as Deputy Chairman and appoint a replacement, provided there shall not be more than one Deputy Chairman at any one time.
- 5.4.5 Any appointment or removal of a Director, Chairman or Deputy Chairman by the Government or CWC (as applicable) shall be made in writing served on the Company signed by the relevant Shareholder and shall take effect when the notice is delivered to the Company, unless the notice indicates otherwise. Any removal shall be without prejudice to any claim which any removed Director may have under any contract between him and the Company.
- 5.4.6 Save as otherwise agreed by the Parties in writing, no Director may be an executive or employee of the Company.

5.5 Quorum

- 5.5.1 Subject to clauses 5.5.3 and 5.5.4, the quorum for transacting business at any Board meeting shall be a majority of the Directors (including, so long as the Government is the registered holder or beneficial owner of at least 15% of the Company's issued share capital, at least two Government Directors or, if the Government is only entitled to appoint one Government Director, including that Government Director) present when the relevant business is transacted.
- 5.5.2 If within half an hour from the time appointed for the meeting a quorum is not present, or if during a meeting a quorum ceases to be present for a period exceeding 30 minutes, the meeting shall stand adjourned to the same day in the next week, at the same time and place, or to such other time and place as the Directors then present may decide (provided such date is not less than two business days after the date of the original meeting).
- 5.5.3 If at any adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the Director or Directors present shall constitute a quorum (whether or not there are only CWC Directors or only Government Directors present).
- 5.5.4 The quorum for transacting business at any Board meeting called in accordance with clause 5.6.1(b) shall be any two Directors (including at least one Government Director, so long as there are any Government Directors) present when the relevant business is transacted.

5.6 Notice and agenda

- 5.6.1 At least five business days' written notice shall be given to each Board member of any Board meeting (other than an adjourned meeting), unless:
- (a) at least a majority of the Directors (including at least one Government Director) approve a shorter notice period; or
 - (b) the Company's senior internal lawyer has advised the Board that a matter (not being a Reserved Matter) requires the urgent consideration of the Board to satisfy the Directors' fiduciary duties (and such advice has been communicated to each Director with the notice of the meeting), in which case the notice period for such meeting to consider such matter shall not be less than the period recommended by the Company's senior internal lawyer in such advice.
- 5.6.2 Any notice shall include an agenda identifying in reasonable detail the matters to be discussed at the meeting together with copies of any relevant papers to be discussed at the meeting. If any matter is not identified in reasonable detail, the Board shall not decide on it, unless a majority of Board members (including at least one Government Director) agree in writing.
- 5.6.3 The Board may invite officers of the Company to attend meetings of the Board.

5.7 Telephone meetings and location of meetings

- 5.7.1 Any Director or alternate Director may validly participate in a meeting of the Board through the medium of conference telephone or similar form of communication equipment provided that all persons participating in the meeting are able to hear and speak to each other throughout such meeting. A person so participating shall be deemed to be present in person at the meeting and shall accordingly be counted in a quorum and be entitled to vote.
- 5.7.2 All business transacted in such manner by the Board or a committee of the Board shall be deemed to be validly and effectively transacted at a meeting of the Board

or a committee of the Board notwithstanding that a quorum of directors is not physically present in the same place.

- 5.7.3 Such a meeting shall be deemed to take place where the largest group of those participating is assembled or, if there is no such group, where the chairman of the meeting then is.
- 5.7.4 Unless otherwise agreed by the Shareholders, the majority of all meetings of the Board held in person shall take place in The Bahamas and the balance of such meetings at such locations as may from time to time be determined by the Chairman. There shall be at least 6 meetings of the Board in each calendar year.

5.8 **Chairman and Board voting**

- 5.8.1 If the Chairman is unable to attend any meeting of the Board, the Deputy Chairman shall act as chairman for such meeting and if neither the Chairman nor the Deputy Chairman is able to attend such meeting, a Director nominated by a majority of the Directors present shall act as chairman at such meeting.
- 5.8.2 The Board shall decide on matters by simple majority vote. Subject to clause 5.8.5, each Director shall have one vote. Any Director who is absent from a meeting may by notice to the Board in writing nominate any other Director to act as his alternate and to vote in his place at the meeting.
- 5.8.3 In the case of an equality of votes at any meeting of the Board, neither the Chairman nor the Deputy Chairman nor the Director acting as chairman of that meeting shall be entitled to have a second or casting vote.
- 5.8.4 The Board may delegate any of its powers (other than in respect of any Services Agreement Matter) to committees consisting of such Directors as they think fit save that (as long as the Government holds at least 15% of the Company's issued share capital) any such committee shall always comprise of at least one Government Director and at least one CWC Director. Any committee so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed on it from time to time by the Board and, subject to any such regulations, must conform to those provisions which govern the taking of decisions by Directors (in so far as such provisions are applicable).
- 5.8.5 No CWC Director (or his alternate) may vote in respect of a Services Agreement Matter.

5.9 **Directors insurance**

The Company shall take out and maintain in force a policy of insurance in respect of matters permitted under Bahamian Companies Legislation for the Directors for the duration of their appointment.

5.10 **Directors of subsidiaries**

- 5.10.1 The Shareholder Parties and the Company undertake to procure that (unless the Shareholder Parties otherwise agree) the board of each Material subsidiary of the Company shall be constituted with the same directors as the Board.
- 5.10.2 The Shareholder Parties and the Company undertake to procure that (unless the Shareholder Parties otherwise agree) the board of each other subsidiary of the Company shall at all times reflect the constitution of the Board for the time being such that.
 - (a) so long as CWC (together with other CWC Group Members) holds more than 50% of the Company's issued share capital, CWC shall have the right to appoint the majority of the members of the board of each such subsidiary and to appoint the chairman of each such board; and

- (b) so long as the Government (together with other Governmental Bodies) holds at least 15% of the Company's issued share capital, the Government shall have the right to appoint the remaining members of the board of each such subsidiary.

5.11 Services Agreements

The Company may request services under the LIME Support Services Agreement or Special Projects under the CWC Support Services Agreement only after such request has been approved by the Board.

6 SHAREHOLDER MEETINGS

6.1 Quorum

- 6.1.1 Subject to clause 6.1.3, the quorum for transacting business at any meeting of the Shareholders shall consist of two or more Shareholders present in person or by proxy or representative when the relevant business is transacted holding together not less than 75% of the issued Shares and of which at least one shall be a duly authorised representative of the Government and at least one shall be a duly authorised representative of CWC.
- 6.1.2 If within half an hour from the time appointed for the meeting a quorum is not present, or if during a meeting a quorum ceases to be present for a period exceeding 10 minutes, the meeting shall stand adjourned to the same day in the next week, at the same time and place, or to such other time and place as the Shareholders may decide.
- 6.1.3 If at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the Shareholder or Shareholders present shall constitute a quorum.

6.2 Notice and agenda

- 6.2.1 At least 14 clear days' written notice shall be given to each Shareholder of any Shareholder meeting (other than an adjourned meeting) unless the Government and CWC approve a shorter notice period. Any notice shall include an agenda identifying in reasonable detail the matters to be discussed at the meeting (unless the Shareholders agree otherwise) together with copies of any relevant papers to be discussed at the meeting. If any matter is not identified in reasonable detail, the Shareholders shall not decide on it, unless the Government and CWC agree in writing.
- 6.2.2 The Government and CWC in each case for so long as it holds at least 15% of the Company's issued share capital may each from time to time and at any time by notice served on the Company call general meetings of the Company, as and when it, in its absolute discretion, sees fit and, forthwith upon service, the Company shall convene a general meeting to be held as soon as practicable thereafter (and in any event within 21 days thereafter).

6.3 Telephone meetings and location of meetings

- 6.3.1 Any Shareholder Party may validly participate in a meeting of the Shareholders through the medium of conference telephone or similar form of communication equipment provided that all persons participating in the meeting are able to hear and speak to each other throughout such meeting. A person so participating shall be deemed to be present in person at the meeting and shall accordingly be counted in a quorum and be entitled to vote.
- 6.3.2 All business transacted in such manner by the Shareholders shall be deemed to be validly and effectively transacted at a meeting of the Shareholders notwithstanding that a quorum of Shareholders is not physically present in the same place.

6.3.3 Such a meeting shall be deemed to take place where the largest group (by number of Shares held) of those participating is assembled or, if there is no such group, where the chairman of the meeting then is.

6.3.4 All meetings of the Shareholders held in person shall take place in The Bahamas unless otherwise agreed by the Shareholder Parties.

6.4 **Chairman and voting**

6.4.1 If the Chairman is unable to attend any meeting of the Shareholders, the Deputy Chairman shall act as chairman for such meeting and if neither the Chairman nor the Deputy Chairman are able to attend such meeting, a Director nominated by a majority of the Shareholders present shall act as chairman at such meeting.

6.4.2 At a meeting of the Shareholders, every question or resolution submitted to a meeting may be decided by a show of hands unless a poll shall be demanded by a Shareholder holding at least 15% of the Company's share capital.

6.4.3 Subject to clause 6.4.5, on a show of hands every Shareholder present in person or by proxy shall have one vote and upon a poll every Shareholder present in person or by proxy shall have one vote for every share held by him/it.

6.4.4 In the case of an equality of votes at any meeting of the Shareholders, neither the Chairman nor the Deputy Chairman nor any Director acting as chairman shall be entitled to have a second or casting vote.

6.4.5 CWC shall not have any vote in respect of a Services Agreement Matter at any meeting of the Shareholders.

7 **CORPORATE GOVERNANCE**

7.1 CWC and the Government shall arrange for the establishment of the Audit Committee within 30 days of the Effective Date.

7.2 The Audit Committee shall be responsible for determining and applying policy on behalf of the Board to the financial reporting and internal control principles of the Company and for maintaining an appropriate relationship with the Company's auditors and shall be subject to the Audit Committee Terms of Reference.

7.3 The Board will establish processes, whether by nomination committee or remuneration committee, to oversee the recruitment of, and the determination of the remuneration and benefits of the senior executive management team of the Company (being those members of the Company's management team, as such management team may be constituted and structured from time to time, who are of equivalent seniority to (or more senior than) the individuals who are, as at the Effective Date, Vice Presidents (or equivalent) of the Company).

7.4 The Shareholder Parties shall arrange for the establishment of such nomination and/or remuneration committees, with such terms of reference, as the Board from time to time determines is appropriate; the membership of each such committee (and the audit committee) shall at all times reflect the constitution of the Board for the time being such that:

7.4.1 so long as CWC (together with other CWC Group Members) holds more than 50% of the Company's issued share capital, CWC shall have the right to appoint the majority of the members of each such committee and to appoint the chairman of each such committee;

7.4.2 so long as the Government (together with other Governmental Bodies) holds at least 15% of the Company's issued share capital, the Government shall have the right to appoint the remaining members of each such committee.

7.5 The process for recruiting any CEO, CFO or COO shall be undertaken by CWC but any appointment of any such officer shall be subject to approval of the Board.

8 UNDERTAKINGS AND RESERVED MATTERS

8.1 CWC's undertakings

In consideration of the Government entering into this Agreement and the Sale and Purchase Agreement, CWC hereby undertakes to the Government, so far as it is able:

8.1.1 that following the Effective Date it will ensure that:

- (a) each Group Member complies in all material respects at all times with all Applicable Laws and all terms and conditions of any Licence held by it from time to time; and
- (b) no Group Member does, or omits to do, anything which results in the revocation, suspension or amendment in a material respect of any Licence held by it from time to time or the withdrawal or loss of any interest in any such Licence;

8.1.2 without prejudice to the generality of clause 8.1.1, to use its best endeavours following the Effective Date to ensure that, except with the prior written consent of the Government (as long as the Government holds at least 15% of the Company's issued share capital);

- (a) the headquarters of the Company remains in The Bahamas;
- (b) the day to day administration, operation and management of the Group shall be conducted substantially from premises in The Bahamas;
- (c) without prejudice to clause 8.3.12, the Business (and each part of the Business) is only conducted through the Group and is conducted on a normal commercial basis; and
- (d) each Group Member takes out and maintains in force such policies of insurance in respect of the Business as may be determined by the Board from time to time to be appropriate and adequate;

8.1.3 that following the Effective Date it will ensure that except:

- (a) with the prior written consent of the Government (as long as the Government holds at least 15% of the Company's issued share capital); or
- (b) in respect of any Services Agreement Matter where the CWC Directors are not permitted to vote pursuant to clause 5.8.5,

each Group Member complies with the terms of each of the Services Agreements;

8.1.4 to notify the Government in writing upon becoming aware that:

- (a) any Relevant Person is in financial difficulties that may reasonably be expected to prejudice the performance of the obligations of CWC or of the Guarantor under this Agreement; or
- (b) any Insolvency Event affecting any Relevant Person is pending or may reasonably be expected to occur;

8.1.5 to use its best endeavours following the Effective Date to effect the Voluntary Workforce Restructuring (i) in accordance with the timetable set out in the Voluntary Workforce Restructuring Plan; and (ii) such that it is completed by the first anniversary of the Effective Date as set out in the Voluntary Workforce Restructuring Plan; and

8.1.6 to procure that CWI Caribbean will not, under the LIME Support Services Agreement, do any act as agent for the Company which, if undertaken by the

Company, would constitute a Reserved Matter, except as permitted under clause 8.6 or with the prior written consent of the Government.

8.2 Use of powers

Whilst and so long as the Government holds at least 15% of the Company's issued share capital, the Company and CWC severally undertake to the Government that they shall use their respective best endeavours following the Effective Date to ensure that except:

8.2.1 as permitted under clause 8.6; or

8.2.2 with the prior written consent of the Government,

no action or decision is taken by the Board, the Company, any other Group Member or any board of directors of any other Group Member in relation to any of the matters specified in clause 8.3 ("**Reserved Matters**").

8.3 Reserved Matters

The Reserved Matters are:

8.3.1 Memorandum and Articles

adopting or altering the Memorandum and Articles or other constitutional documents of the Company;

8.3.2 Changes in share capital

making or agreeing to make any change to the Company's authorised or issued share capital (whether by consolidating, sub-dividing, purchasing, redeeming, cancelling, allotting or issuing any shares), or granting any option over, or issuing any instrument carrying rights of conversion into, any shares of the Company;

8.3.3 Change in nature of Business

Materially changing the nature or scope of the Business of any Group Member;

8.3.4 Borrowings

any Group Member incurring any Financial Indebtedness which would result in the Net Debt exceeding an amount being equal to 2.5 times EBITDA (or such other amount or ratio as the Shareholders may agree in writing from time to time);

8.3.5 Loans

any Group Member making any loan or advance (other than normal trade credit) to any other person other than:

(a) to another wholly-owned Group Member; or

(b) in the ordinary course of business of a Group Member;

8.3.6 Disposals

any Group Member selling, transferring, leasing, assigning or otherwise disposing of (whether in a single transaction or series of transactions) a Material part of the undertaking, property and/or assets of any Group Member (or any interest therein) to any person other than a wholly-owned Group Member, or agreeing so to do;

8.3.7 Acquisitions

any Group Member acquiring (whether in a single transaction or series of transactions) any business (or any Material part of any business) or any shares in

any company or interest in any other entity where the value of the acquisition exceeds US\$37,500,000 or agreeing so to do (other than any acquisition or agreement to acquire pursuant to clause 12.2.2);

8.3.8 Charges

without prejudice to the generality of clauses 8.3.11 and 8.3.12 any Group Member creating or agreeing to create any Encumbrance over all or a Material part of such Group Member's undertaking, property or assets, or giving any guarantees or indemnities:

- (a) for the purpose of securing any obligations or liabilities of any person referred to in clauses 8.3.12(b)(i) or 8.3.12(b)(ii); or
- (b) otherwise than as security in respect of any Financial Indebtedness which is not prohibited by clause 8.3.4;

8.3.9 Relocation overseas

any Group Member relocating:

- (a) its principal place of business; or
- (b) a Material part of its undertaking, property and/or assets;

8.3.10 Partnerships and joint ventures

any Group Member entering into (or terminating) any Material partnership, joint venture or profit-sharing agreement with a value in excess of 10% of the total annual revenues (as stated in the latest audited accounts) of the relevant Group Member;

8.3.11 Contracts outside the ordinary course

any Group Member entering into any contract, liability or commitment other than:

- (a) in the ordinary course of business of a Group Member;
- (b) with another wholly-owned Group Member; or
- (c) on commercial arm's length terms,

unless such contract, liability or commitment satisfies such authorisation criteria as the Government and CWC may approve from time to time as part of the procedures for the Group entering into contracts;

8.3.12 Transactions with CWC Group, directors or employees

any proposed contract, transaction or arrangement or series of connected contracts, transactions or arrangements (other than (i) subject to clause 8.3.13, the Services Agreements (and any service level agreements or arrangements entered into under and in accordance with the Services Agreements), (ii) the Existing CWC Agreement, (iii) any contract, transaction or arrangement (not being the Services Agreements or the Existing CWC Agreement) for communications services, products or networks on commercial arm's length terms (including as to price) and in the ordinary course of business of a Group Member under which Group Members collectively do not incur liabilities in any twelve month period exceeding in aggregate B\$1,000,000, and (iv) any acquisition agreement pursuant to clause 12.2.2) between:

- (a) on the one hand, any Group Member; and
- (b) on the other hand:

- (i) any CWC Group Member other than the Group Members; and/or
- (ii) any director or employee of any CWC Group Company (other than the Group Members),

or any proposed payment (whether in cash or otherwise) by or to (A) a Group Member, to or from (as applicable) (B) any person referred to in (b) above or agreeing so to do, but always excluding (x) the renewal, extension or continuation of the Existing CWC Agreement on broadly equivalent terms and (y) any payments under any contract, transaction or arrangement referred to at the beginning of this paragraph in (i), (ii), (iii) or (iv).

8.3.13 **Services Agreements**

in respect of the Services Agreements, any decision by the Company:

- (a) in respect of the CWC Support Services Agreement only, to increase the fixed fee;
- (b) to change the basis of charging fees and costs;
- (c) to terminate either of the Services Agreements;
- (d) to vary materially the provisions of either of the Services Agreements; or
- (e) in respect of the CWC Support Services Agreement, to agree any new Special Project, or in respect of the LIME Support Services Agreement, request any services, in either case, in circumstances where the relevant costs of the relevant Special Project or service would result in the relevant Specified Limit being exceeded;

8.3.14 **Listing**

any proposal for a Listing;

8.3.15 **Winding-up etc**

the taking of any corporate action, legal proceedings or other procedure or step in relation to:

- (a) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, liquidation, administration or reorganisation (by way of a voluntary arrangement, scheme of arrangement or otherwise) of any Group Member;
- (b) a composition, compromise, assignment or arrangement with, or for the benefit of, any creditor of any Group Member; or
- (c) the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of any Group Member or any of its assets which shall include any Shares held by any Group Member,

or any other insolvency procedure in respect of any Group Member;

8.3.16 **Auditors**

any proposed change in the auditors of any Group Member other than to align such auditors with the auditors of the CWC Group or unless such auditors have a substantial presence in The Bahamas;

8.3.17 **Pensions**

any decision to terminate the Pension Plan or the Deposit Administration Contract (as defined in the Pension Rules) which exists thereunder, or any agreement with the Pension Trustee to appoint an earlier Termination Date (as defined in the Pensions Deed) for the purposes of the Pension Plan; and

8.3.18 **Redundancies etc.**

any formal or other redundancy exercise or any other formal or other exercise to reduce the number of employees of the Company in the two year period following the Effective Date (excluding any attrition of staff in the normal course of business or the ongoing exercise of the Company's early retirement programme).

8.4 **Method of approval of Reserved Matters**

8.4.1 For the purposes of this Agreement, the consent or approval of a Reserved Matter by the Government will only be deemed to have been given in respect of such matter where a document confirming such consent or approval, signed by the Minister responsible for the Company (as notified by the Government to the Company from time to time) (or such other person, being a Government Director, as such minister may nominate in writing from time to time), is delivered to the Board.

8.4.2 The Government hereby undertakes to use its best endeavours to grant or, as the case may be (in its absolute discretion), withhold its consent or approval to a Reserved Matter, and to notify the Company and CWC of the same in writing, as soon as reasonably practicable after receipt by the Government of a Reserved Matter Request.

8.5 **Deadlock**

If a deadlock arises because the Shareholder Parties or the Directors (other than in the case of any dispute pursuant to clause 17) fail to agree on any matter requiring their decision, the matter shall be referred to the Financial Secretary and chief executive officer of CWC plc (or such other company as may be the ultimate parent company of CWC for the time being) with a view to it being resolved as early as possible in the best interests of the Company. Each Shareholder Party shall endeavour to resolve any disagreement in the best interests of the Company, but in the event that they are unable to resolve any such disagreement within a period of 45 days, it shall be resolved in accordance with clause 37.

8.6 **Matters not requiring the consent or approval of the Government**

For the purpose of this Agreement, the consent or approval of the Government will not be necessary in respect of matters specifically and expressly set out in, permitted by, required under or agreed pursuant to:

8.6.1 the Voluntary Workforce Restructuring Plan, in respect of clauses 8.3.3, 8.3.9 and 8.3.18 only; or;

8.6.2 the First Business Plan, (in the first three years following the Effective Date) in respect of clauses 8.3.3, 8.3.6, 8.3.9 and 8.3.18 only.

8.7 Service Level Agreements with Government

The Company and the Government will use reasonable endeavours to enter into (and CWC will use reasonable endeavours to procure that the Company enters into) service level agreements on commercial arm's length terms (including as to price) within 45 days of the Effective Date in respect of the provision of services by the Company to the Government and/or any Governmental Body where such services are provided to the Government and/or any Governmental Body by the Company as at the Effective Date.

9 FINANCIAL MATTERS

9.1 Accounting Principles

The Company shall adopt the Accounting Principles in relation to its financial statements.

9.2 Auditors

Until the completion of the audit of the Company's financial statements for the Financial Year ended 31 December 2010, the Company's auditors shall be PricewaterhouseCoopers. Thereafter, the Company's auditors shall be CWC's group auditors or any other firm of chartered accountants which has a substantial presence in The Bahamas.

10 DIVIDEND POLICY

10.1 Subject to clause 10.2, the Shareholder Parties shall, unless they agree otherwise in relation to any Financial Year, use their respective best endeavours to procure that in respect of each Financial Year, each Group Member distributes its distributable cash (taking into account any restrictions imposed by applicable law, available cash and the then current Business Plan).

10.2 Unless the Shareholder Parties otherwise agree, for each of the Financial Years ending 31 March 2012 and 31 March 2013, the Company shall not distribute in excess of 60% of the Company's after-tax profits (before taking account of exceptional charges and non-cash exceptional income) as shown in the Company's audited financial statements for the relevant Financial Year.

11 INFORMATION AND REPORTING

11.1 Inspection and information

11.1.1 Each Shareholder Party may examine the separate books, records and accounts to be kept by the Company and, as applicable, each other Group Member.

11.1.2 Each Shareholder Party shall be entitled to receive from the Company (and, for so long as the Government holds at least 15% of the Company's issued share capital, CWC shall, so far as it is able, procure that the Government is provided by the Company with) all information, including monthly management accounts and operating statistics and other trading and financial information, in such form as such Shareholder Party reasonably requires to keep it properly informed about the business and affairs of the Group and generally to protect its interests as a Shareholder.

11.1.3 For so long as the Government holds at least 15% of the Company's issued share capital, the Company shall provide, and CWC shall, so far as it is able, procure that the Company provides, to the Government Directors the same information (including trading and financial information) relating to the Group as is provided from time to time to any CWC Group Member (or any director of any such company), at the same time as such information is so provided or as soon as reasonably practicable thereafter, but excluding any day to day operational material which would not usually be provided to directors in the ordinary course of business of a company which is similar to CWC or such Group Member.

11.1.4 Each Shareholder Party and Director shall be entitled to raise reasonable enquiries of the Board in respect of any information received and/or examined pursuant to clauses 11.1.1, 11.1.2, 11.2 and, in respect of the Government, 11.1.3 (including any accounts, Budgets and Business Plans), and the Company, acting reasonably, shall provide appropriate responses to such enquiries as soon as practicable thereafter.

11.2 Accounts, Business Plan and Budget

Without prejudice to the generality of clause 11.1, the Company shall provide, and CWC shall procure that the Company provides:

11.2.1 the Shareholder Parties with copies of the audited accounts for each Group Member (complying with all relevant legal requirements) and, if applicable, the Group's audited consolidated accounts as soon as they are finalised and, in any event, within 6 months of the end of the relevant Financial Year;

11.2.2 the Board with:

- (a) no later than 60 days before the commencement of each Financial Year after the Effective Date, a draft Business Plan, to be approved by the Board;
- (b) no later than 60 days before the commencement of the relevant Financial Year, a draft itemised revenue and capital Budget for such Financial Year (to be approved by the Board), showing proposed trading and cash flow figures, manning levels and all material proposed acquisitions, disposals and other commitments for such Financial Year.

11.3 Meeting between principals

11.3.1 For so long as the Government holds at least 15% of the Company's issued share capital, the Government and CWC undertake to procure that senior representatives of the Government and CWC plc (or such other company as may be the ultimate parent company of CWC for the time being) meet no less than once every calendar year during the continuance of this Agreement to discuss and review the Group's trading and its operating and financial performance for the previous 12 months, the projected performance for the next 12 months, as well as the relationship between the Shareholders.

11.3.2 For the purposes of clause 11.3.1, "**senior representative**" means:

- (a) in respect of the Government, the Minister of Finance or a representative designated by the Minister of Finance; and
- (b) in respect of CWC, the chairman or chief executive officer of CWC plc (or such other company as may be the ultimate parent company of CWC for the time being).

12 NON-COMPETITION

12.1 Non-competition with Company

12.1.1 CWC agrees that neither it, nor any CWC Group Member (excluding, for this purpose, any partner (not being a CWC Group Member) as referred to in limb (c) of the definition of "CWC Group" as set out in this Agreement which is not otherwise a CWC Group Member), shall during the Restricted Period:

- (a) either on its own account or through any other person (other than a Group Member), so as to compete with the Competing Business of any Group Member in the Territory, directly or indirectly solicit, interfere with, seek to do business with, in each case in the Territory, or endeavour to entice

away from the Company or any Group Member in respect of the Territory, any person who is a client, customer or supplier of the Company or any other Group Member in the Territory; or

- (b) either on its own account, or through any other person, directly or indirectly solicit, interfere with, seek to do business with or deal with or endeavour to entice away from the Company, or any other Group Member, any person who is, or has at any time during the Restricted Period been, a Key Employee of the Company or any other Group Member; or
- (c) either on its own account or through any other person (other than the Group) directly or indirectly:
 - (i) engage in the Territory in a Competing Business; or
 - (ii) provide in the Territory any mobile, fixed, internet and data communications services which require a Licence in respect of the Territory or establish, operate or maintain in the Territory any Licensed Systems.

12.2 Exceptions

The restrictions contained in clause 12.1 do not affect or prohibit:

- 12.2.1 CWC (or any other CWC Group Member) (excluding, for this purpose, any partner (not otherwise being a CWC Group Member) as referred to in limb (c) of the definition of "CWC Group" as set out in this Agreement) or Government (or any Governmental Body) acquiring or holding shares amounting to less than 10% of the capital of a company quoted on any stock exchange and engaged in activities which would be restricted by clause 12.1; or
- 12.2.2 CWC (or any CWC Group Member) (excluding, for this purpose, any partner (not otherwise being a CWC Group Member) as referred to in limb (c) of the definition of "CWC Group" as set out in this Agreement) acquiring any entity which carries on a Competing Business if such business (the "**Relevant Business**") does not represent a substantial part of the acquired entity. If CWC (or any CWC Group Member) (excluding, for this purpose, any partner (not otherwise being a CWC Group Member) as referred to in limb (c) of the definition of "CWC Group" as set out in this Agreement) effects any such acquisition during the Restricted Period, the relevant acquiror of the Relevant Business shall, if so requested in writing by the Government for so long as the Government holds at least 15% of the Company's issued share capital, sell the Relevant Business either, at CWC's sole option notified in writing to the Government, to (a) a Group Member on commercial arm's length terms (in which case such sale shall not be a Reserved Matter for the purposes of this Agreement) or (b) a third party purchaser.

12.3 Severability

Each of CWC, the Government and the Company agrees that it considers that each of the restrictions contained in this clause are no greater than is reasonable and necessary for the protection of their respective commercial interests but if any such restriction shall be held to be void but would be valid if deleted in part or reduced in application, such restriction shall apply with such deletion or modification as may be necessary to make it valid and enforceable.

13 HAITI CABLE LINK

The parties acknowledge BTC's investment in the BDSNi cable link between The Bahamas and Haiti and agree that CWC shall procure that BTC shall seek to maximise its opportunities to commercialise its investment in that cable link on a competitive basis.

14 REGULATORY MATTERS

14.1 Co-operation

The Shareholder Parties shall co-operate with each other to ensure that all information necessary or desirable for making (or responding to any requests for further information following) any notification or filing made in respect of this Agreement, or the transactions contemplated by it, is supplied to the Shareholder Party dealing with such notification and filing and that they are properly, accurately and promptly made.

14.2 Third Party Action

If any Third Party Action is anticipated, threatened or taken, the Shareholder Parties shall promptly meet to discuss the situation and the appropriate action to be taken as a result.

15 GUARANTEE

15.1 In consideration of the Government entering into this Agreement, the Guarantor:

15.1.1 as principal obligor and not merely as a surety, hereby unconditionally guarantees due and punctual performance by CWC (which for the purposes of this clause 15 shall include any CWC Group Member to which CWC has transferred Shares) of all CWC's obligations arising out of, or in connection with, this Agreement (the "**Guarantor Obligations**"); and

15.1.2 undertakes to the Government that if, and whenever CWC is in default of any of the Guarantor Obligations, it will on demand duly and promptly perform or procure such performance of such obligation(s).

15.2 The Guarantor's obligations under this Agreement will not be affected by any act, omission, matter or thing which, but for this clause 15.2, would release, reduce or prejudice any of its obligations under this clause 15 (without limitation and whether or not known to it, the Government or the Company) including:

15.2.1 any time or indulgence granted to or composition with CWC or any other person; or

15.2.2 the taking, variation, compromise, renewal or release of, or refusal or neglect to perfect or enforce, any right or remedy against CWC or any other person; or

15.2.3 any legal limitation, disability, incapacity or other circumstances relating to CWC or any other person; or

15.2.4 any change in the name or constitution of the Guarantor or its respective successors and assigns or its absorption by or amalgamation with any other company; or

15.2.5 any unenforceability, illegality or invalidity of CWC's obligations in respect of the Guarantor Obligations;

provided that, for the avoidance of doubt, any and all rights and benefits, and any limitations on liability, of CWC set out in this Agreement (as amended or varied in accordance with this Agreement) in respect of the Guarantor Obligations shall apply equally to the Guarantor.

15.3 The guarantee contained in clause 15.1 is a continuing guarantee and will remain in full force and effect until all CWC's obligations in respect of the Guarantor Obligations have been fully performed or been discharged.

15.4 If any discharge, release or arrangement in respect of the Guarantor Obligations is made by the Government in whole or in part on the basis of any payment, security or other disposition which is avoided or must be restored in insolvency, liquidation, administration or otherwise, without limitation, then the liability of the Guarantor under this clause 15 will continue or be reinstated as if the discharge, release or arrangement had not occurred provided that this

clause shall only apply to any avoidance or restoration that occurs within the relevant statutory period.

- 15.5 The Guarantor hereby waives any rights it may have of first requiring the Government to proceed against or enforce any guarantee or security of or claim for payment from CWC or any other person in respect of the Guarantor Obligations.

16 DISPOSAL OF ASSETS BY GUARANTOR

- 16.1 Prior to the Guarantor selling, transferring or otherwise disposing of (whether in a single transaction or series of transactions) substantially all of its assets (a "**Substitution Event**"), it shall:

16.1.1 procure a Comparable Guarantor to act as guarantor under this Agreement in its place as the Guarantor;

16.1.2 notify the Government, not less than 20 business days in advance, of the proposed Substitution Event, the intended date of that Substitution Event, the identity of the proposed substitute guarantor (the "**Proposed Substitute**") and the following information (such notification being the "**Substitution Notification**"):

- (a) the consolidated audited accounts of the Proposed Substitute for the preceding two accounting periods;
- (b) evidence that the Proposed Substitute is a Qualifying CWC Group Company; and
- (c) such other information relating to the Proposed Substitute available to CWC that the Government may reasonably request.

- 16.2 The Proposed Substitute may only replace the Guarantor for the purposes of this Agreement:

16.2.1 if the Proposed Substitute is a Comparable Guarantor;

16.2.2 following the expiry of 20 business days from the date of the Substitution Notification (unless the Government, prior to the end of such period, notifies the Guarantor in writing that the Proposed Substitute is a Comparable Guarantor, in which case the Proposed Substitute may replace the Guarantor immediately following such notification);

16.2.3 prior to the Substitution Event, which must be effected within three months of the end of the 20 business day period referred to in clause 16.2.2; and

16.2.4 if the Proposed Substitute undertakes to comply with the provisions of, and to perform all the obligations of the Guarantor in, this Agreement by way of entry into a valid, binding and effective deed of adherence to this Agreement (a "**Substitution Deed**").

- 16.3 Following a Substitution Deed coming into force, references in this Agreement to the Guarantor shall be read as a reference to the relevant Substitute Guarantor.

- 16.4 In the event that a Substitution Deed is entered into, the obligations of the original Guarantor under this Agreement shall terminate with effect from the date on which the Substitution Deed comes into full force and effect.

17 PENSIONS

17.1 Closure of the Pension Plan to new entrants

The Company will, on or immediately after the Effective Date, effect a modification of the Pension Rules by executing a deed in the form set out in Schedule 4 and will, immediately thereafter, serve a copy of such deed (under cover of a notice in the form set out in Schedule 5) upon the Government and the Pension Trustee.

17.2 Establishment of alternative pension arrangements for new hires

The Company will, as soon as practicable after the Effective Date (but with retroactive effect on and from such date) and in any event by no later than six months after the Effective Date, establish and implement, in the form of the New DC Plan, alternative pension arrangements for those who enter the Company's employ on a permanent basis on or after the Effective Date.

17.3 Legacy contribution arrangements

The Government will, as soon as practicable (and in any event within one month) after the Company has complied with its obligations under clause 17.1 above:

- 17.3.1 transfer or otherwise remit the sum of B\$100 to the trustee-elect of the Feeder Trust (being the entity named as its first trustee in the Declaration of Trust);
- 17.3.2 establish the Feeder Trust by forthwith joining with such trustee-elect and the other parties to it and executing the Declaration of Trust; and
- 17.3.3 immediately thereafter transfer or otherwise remit (whether directly, or by procuring the remittance on its behalf) to the Intermediate Trustee the Initial Contribution, such amount (together with that previously remitted) to be held and applied on the trusts thereof for such time as it shall continue to subsist, and notify the Company that it has done so.

The Company will furthermore instruct the Plan Actuary as soon as practicable after the Effective Date to calculate and notify the Company, the Government and the Intermediate Trustee of the amount of the Point-of-Sale Deficit. The Declaration of Trust sets out the obligations of the Intermediate Trustee to then remit an amount equal to the Point-of-Sale Deficit to the Pension Trustee.

Thereafter, until such time as the Company and the Government otherwise agree:

- 17.3.4 the Government will remit (or procure the remittance on its behalf) to the Feeder Trust such additional Top-Up Contributions as may be required or (as the case may be) desired; and
- 17.3.5 the Company will remit (or procure the remittance on its behalf):
 - (a) to the Pension Trustee (for the benefit of the Pension Plan), monthly contributions of 10% of the pensionable salaries of the active members of the Pension Plan from time to time;
 - (b) to the Pension Trustee (for the benefit of the Pension Plan), such Plan Expenses Payments as may from time to time arise;
 - (c) to the Intermediate Trustee (for the benefit of the Feeder Trust), such Trust Expenses Payments as may from time to time arise;
 - (d) to the Pension Trustee (for the benefit of the Pension Plan), such Headcount Reduction Costs as may from time to time arise; and
 - (e) to the Pension Trustee (for the benefit of the Pension Plan), any amounts which the Company agrees to pay under clause 17.6.2(a), and such costs that the Pension Trustee (acting on the advice of the Plan Actuary) considers to fall within the second sentence of clause 17.6.2(b).

For the avoidance of doubt it is hereby confirmed and recognised that the initial and ongoing payment obligations from the Feeder Trust to the Pension Plan are set down within the separate terms of the Declaration of Trust, which alone shall govern and determine the scope and extent of such obligations.

17.4 Funding basis for the Pension Plan

Immediately after the Effective Date the Company will instruct, and hereby irrevocably instructs, the Plan Actuary to undertake an Actuarial Valuation on the basis envisaged by clause 17.4.2, albeit as at the Effective Date and with a view to determining and reporting on the contributions due for the remainder only of the Contribution Year in which the Effective Date falls (but which shall, notwithstanding the foregoing, constitute an Actuarial Valuation for the purposes of this Agreement), and in order to form a view as to the amount of the Point-of-Sale Deficit.

For so long as the Feeder Trust (once established pursuant to the Legacy Contribution Arrangement) remains in existence and funded by the Government in accordance with the requirements of clause 17.3:

17.4.1 the Company will declare, and contingent upon such establishment of the Feeder Trust the Company hereby irrevocably declares, that the Pension Rules shall stand amended so that:

(a) the definition of "Deposit Fund" in Section I reads:

"DEPOSIT FUND" means the fund, established by contributions made by the Corporation (or procured by it to be made), from which the retirement benefits are to be provided. These contributions are made (or, as the case may be, procured to be made) in total by the Corporation and no contributions are required of the members."

(b) the definition of "Contributions made by the Corporation" in Section I reads

"CONTRIBUTIONS MADE BY THE CORPORATION" in respect of any member means the contributions required to have been made or procured in order to secure the benefits to which that member is entitled."

(c) the contribution obligation contained in Section V reads:

"The Corporation shall contribute (or procure the contribution of) the monies necessary, as determined by the actuary to provide the benefits under the Plan."

(d) the second paragraph of Section XVII reads:

"As part of the Plan the Management Committee may with a selected company become a party to a Deposit Administration Contract under which the said company shall receive the contributions made or procured to be made by the Corporation to the Deposit Fund in accordance with the terms and provisions of the Plan and the Deposit Administration Contract. It is the intention of the Corporation that this shall be a permanent Plan for the exclusive benefit of its Members and the Corporation shall contribute (or procure the making of contributions) to the Deposit Fund each and every month during the continuance of the said Plan. The Corporation shall pay or procure the payment of the contributions into the Deposit Fund for the purposes of the retirement benefits under the Plan as determined by the actuary."

(e) the first paragraph of Section XVII reads:

"The Corporation reserves the right, without consent of any Member, at any time or times, to amend, modify or terminate the Plan and or the Deposit Administration Contract or to change the method of underwriting. However, the Corporation shall have no power to re-open the Plan to new Members, or to amend, modify or terminate the Plan in such a manner as could cause or permit any part of the Deposit Fund to be

diverted to purposes other than for the exclusive benefit of Members or their beneficiaries.”

- (f) and the second paragraph of Section XVIII reads:

“Upon the termination of the Plan, no further contributions shall be made (or as the case may be procured to be made) by the Corporation for the members, and the Corporation shall provide for an equitable allocation of the Deposit Fund solely to the members remaining in the Plan at the date of termination.”

17.4.2 the Company will instruct, and contingent upon such establishment of the Feeder Trust the Company hereby irrevocably instructs, the Plan Actuary, to the extent permitted by law:

- (a) to undertake Actuarial Valuations on an annual basis involving the application of the Current Salary Method in place of any alternative method for the time being in use or otherwise considered for use; and
- (b) to provide copies of the same within twenty-eight calendar days after the date on which any such Actuarial Valuation is signed (but in any event, if earlier, by no later than the end of April in each year), to the Company, to the Intermediate Trustee and to the Government; and
- (c) on such regular basis as the Plan Actuary and the Company may agree (but in any event no less frequently than quarterly), to notify the Company of, and seek its prompt reimbursement to the Pension Plan of, any and all proper expenses and liabilities incurred by the Pension Trustee in administering the Pension Plan.

The Government may furthermore at any time, at its own expense and without the concurrence of any of the other Parties, notify the Company that it desires a full formal valuation of the assets and liabilities of the Pension Plan to be carried out and provided to both itself and the Company, in order that it (the Government) may consider the potential magnitude of the Legacy Lump Sum; whereupon the Company will, and contingent upon the receipt of each and any such notification irrevocably undertakes that it will, instruct the Plan Actuary accordingly. The commissioning and conclusion of any such full formal valuation shall not, however, result in any change to the level of contributions due to the Plan, which shall continue to be determined by reference to the most recent Actuarial Valuation (until such time as the next-following Actuarial Valuation is concluded, whereafter its results shall determine such contribution levels); and

17.4.3 the Company will:

- (a) promptly notify the Plan Actuary when any Headcount Reduction Exercise has taken place; and
- (b) instruct, and hereby irrevocably instructs, the Plan Actuary to determine and notify as soon as practicable thereafter to the Company, to the Pension Trustee and to the Government the amount of any Headcount Reduction Cost,

it being hereby agreed that any such Headcount Reduction Cost shall be a direct funding obligation of the Company itself and that in no circumstances shall the cost of the same be borne by the Government or the Feeder Trust.

17.5 DC conversion exercise and other liability management steps

- 17.5.1 The Company will, in consultation with the Government, and with all due diligence following (and in any event within two calendar years after) the Effective Date, design a programme to offer all or any members of the Pension Plan the opportunity to convert their accrued (salary-related) benefits, by means of the DC Conversion Exercise, into benefits that are money purchase in nature and to join the New DC Plan for future service benefits thereafter. Implementation of the DC Conversion Exercise will be subject to the Company being satisfied that it does not carry any reasonable legal or reputational risk for the Company; but, subject to that, the Government will be allowed to retain control over the exercise (including member communication, the timing of the exercise and level of pension transfer enhancement required).
- 17.5.2 In respect of any member who accepts such an incentive offer, the Company will notify the Intermediate Trustee as soon as practicable thereafter the amount in question and details of the member to or in respect of whom it is to be applied, and will instruct the Intermediate Trustee to promptly make such a payment in that member's favour.
- 17.5.3 The costs and expenses properly incurred in connection with the design and implementation of the DC Conversion Exercise will be borne by the Company but will be reimbursed in full by the Government (for the avoidance of doubt, the pension enhancement element of the DC Conversion Exercise will be borne by the Pension Plan and thereby the Feeder Trust, rather than by the Company). The Company will provide the Government with (i) an itemised breakdown of costs and (ii) evidence of payment. The Government reserves the right to ask for further evidence or detail in respect of any particular expense.
- 17.5.4 Within that same period of time, but whether as part of that same exercise or otherwise, the Company will:
- (a) bring to the attention of the active members of the Pension Plan that, with effect from the date in the future specified in (and being no less than 6 and no more than 12 months after the date of) such notice, but subject always to any overriding provisions contained in the Industrial Agreements, the Company's consent for the purposes of early retirement benefits under Section IV of the Pension Rules must be both applied for and granted on a case-by-case basis in order for early retirement benefits under the Pension Plan to become payable, and that such consent will not be treated as automatically given upon any early retirement from (or other non-consensual termination of) service; and
 - (b) undertake such communication exercise or exercises as the Government may reasonably require with members of the Pension Plan, involving such combination of announcements, presentations, members' explanatory booklets and periodic seminars (and other media) as it may consider appropriate, in order to inform and/or remind such members on a general basis of the benefits that the Pension Plan is obligated to provide and the circumstances in which it will do so.

For the avoidance of doubt, the actions required of the Company under this clause 17.5.4 are acknowledged to be without prejudice to any existing actual or contingent employee entitlements (whether under the current Industrial Agreements or otherwise) or to the allocation of funding liabilities set out in clause 17.3 above.

17.6 Ongoing governance: Pension Plan

- 17.6.1 Without prejudice always to the Reserved Matters, contingent upon the establishment (pursuant to the Legacy Contribution Arrangement) of the Feeder Trust, the Company and CWC hereby irrevocably undertake that, for so long as the

Feeder Trust remains in existence and funded by the Government in accordance with the requirements of clause 17.3, they will procure that no action or decision will be taken by the Company in relation to:

- (a) the granting of Salary Increases (whether by changes to the levels of remuneration to which they are entitled or otherwise howsoever, and whether granted by the Company itself or required by the Industrial Agreements, but save to the extent required by those Industrial Agreements in place as at the Effective Date) that exceed 3%;
- (b) any amendment to the terms of any early retirements or redundancies on immediate unreduced pension (but subject always to any overriding provisions contained in the Industrial Agreements);
- (c) permitting such immediate unreduced pensions to be available in circumstances in which they would not be available pursuant to the terms of the Industrial Agreements or other arrangements in place on the Effective Date (whether by amendment to the Industrial Agreements or otherwise);
- (d) the investment policy, strategy or principles of the Pension Plan;
- (e) alterations, modifications, amendments or variations (howsoever expressed) to, or benefit augmentations or enhancements (howsoever expressed) under, the Pension Rules or the Pensions Deed;
- (f) appointing or removing, or determining the terms of any appointment or engagement of, the current or any future Pension Trustee;
- (g) appointing or removing, or determining the terms of any appointment or engagement of, any investment manager for the Pension Plan (to include without limitation the terms of any investment management agreement pursuant to which any investment powers of either such trustee are delegated to such an investment manager);
- (h) making any change to the identity of the actuary appointed for the purposes of the Pension Plan;
- (i) removing or otherwise altering the requirement to have the books of account or any valuation (whether an Actuarial Valuation or otherwise) relating to the Pension Plan prepared, audited or circulated on a regular basis;
- (j) substituting another employer in place of the Company for the purposes of the Pension Plan; and/or
- (k) any other matter that would, were it not for the Government no longer holding at least 15% of the Company's issued share capital, be a Reserved Matter for the purposes of clause 8.3.17,

unless all of the Government Directors then in post have (or, if and for so long as there is only one, that Government Director has) voted in favour of the action or decision in question.

17.6.2 The requirement to seek the approval of all the Government Directors will not be necessary where:-

- (a) the Company wishes to undertake any action defined in clauses 17.6.1(a) to 17.6.1(c) and the Company agrees to pay such amount as the Pension Trustee (acting on the advice of the Plan Actuary) considers to be the cost to the Pension Plan arising from that action (for the avoidance of doubt, for these purposes the additional cost arising from any action defined in clause

16.6.1(a) is the cost of the action to the extent it exceeds the cost which would have arisen if Salary Increases had been limited to 3%); or

- (b) after taking advice from the Plan Actuary, the Company believes that any proposed action defined in clauses 17.6.1(a) to 17.6.1(k) above, will not have, nor is it anticipated that it will ever have, a negative impact on the funding of the Pension Plan. If, after any action has been taken by the Company pursuant to this sub-clause, it transpires that there has been an increase in the liabilities of the Pension Plan as a result of such Company action, then the Company will reimburse the Pension Trustee in accordance with clause 17.3.5(e).

17.6.3 For so long as the Feeder Trust (once established pursuant to the Legacy Contribution Arrangement) remains in existence and funded by the Government in accordance with the requirements of clause 17.3, and contingent until such time upon such establishment of the Feeder Trust, the Company hereby irrevocably declares that the Pension Rules shall stand amended so as to require a differently-constituted Management Committee, comprising three union members as per the Pension Rules, two members of the Company's executive management (one of whom shall be the CFO and one of whom shall be the Company's Vice-President, Human Resources), one Government Director and one CWC Director.

17.7 **Notice to Pension Trustee**

The Company will, immediately following the establishment of the Feeder Trust, give notice to the Pension Trustee of the alteration of the Pension Rules in the manner set out in clauses 17.4 and 17.6 above, as required by clauses 1(j) and 21 of the Pensions Deed.

17.8 **Ongoing governance: Feeder Trust**

For so long as the Feeder Trust (once established pursuant to the Legacy Contribution Arrangement) remains in existence and funded by the Government in accordance with the requirements of clause 17.3, and contingent until such time upon such establishment of the Feeder Trust, the Government hereby irrevocably undertakes not to make any alteration to the terms of the Feeder Trust (as contained in the Declaration of Trust) without the prior written consent of CWC.

17.9 **Exiting the legacy contribution arrangement**

If any of the following circumstances pertain, namely:

- 16.9.1 the twenty-fifth anniversary of the Effective Date has passed; or
- 16.9.2 the number of active members in the Pension Plan has fallen below one quarter of the number of active members therein as at the Effective Date; or
- 16.9.3 the Government no longer holds at least 15% of the Company's issued share capital;
or
- 16.9.4 the Company has ceased to carry on business by virtue of a sale of its entire business and undertakings to a third party; or
- 16.9.5 the Company and the Government otherwise agree,

the Government may approach the Company to seek the Company's agreement that the Government's obligations under 16.3.4 should cease. For the avoidance of doubt it is hereby confirmed and recognised that those Government obligations are terminable only if the Company should agree. The Government further acknowledges that the Company is only likely to only to agree to the termination of the Government's obligations under 16.3.4 if the Company is satisfied on a prudent view having taken appropriate actuarial advice that the assets then within the Feeder Trust will be sufficient (in conjunction with future amounts

payable to the Pension Plan by the Company under clause 17.3.5) to meet all future liabilities of the Pension Plan.

17.10 **Performance of obligations**

Any matter that is expressed in any of clauses above to be an obligation of any of the Parties, shall also be construed as a covenant on that Party's part in favour of each of the other Parties severally to undertake the obligation in question.

18 **TRANSFER OF SHARES**

18.1 **General**

18.1.1 Save for Minority Shareholders, any person who holds, or becomes entitled to, any Share shall not, without the consent of the Shareholder Parties, effect a transfer of any Share except a transfer in accordance with clauses 18 or 20.

18.1.2 The provisions of this Agreement in relation to the transferability of Shares are without prejudice to the powers of any Governmental Body under any exchange control or national investment policies or legislation of The Bahamas from time to time to restrict, or impose conditions on, any transfer of Shares.

18.2 **Restriction on transfers**

Except pursuant to clauses 18.14, 18.15 or 20, or with the prior written consent of the other Shareholder Parties each holding at least 15% of the issued share capital of the Company (the "**Other Shareholder Parties**" and each an "**Other Shareholder Party**"), no Shareholder Party shall transfer any Shares prior to the Fifth Anniversary and the provisions of clauses 18.4 to 18.16 shall apply from the Fifth Anniversary.

18.3 **Transfers of entire shareholding**

Except for:

18.3.1 transfers for which consent is given under clause 18.2; or

18.3.2 transfers pursuant to clause 18.14 and 18.15; or

18.3.3 transfers pursuant to clause 20,

no Shareholder Party may transfer Shares unless it (the "**Seller**") transfers all (and not some only) of the Shares held by it (the "**Seller's Shares**").

18.4 **Transfer Notice**

Before the Seller makes any transfer of the Seller's Shares, the Seller shall give the Company prior notice in writing (a "**Transfer Notice**") of the proposed transfer together with details of any proposed third party purchaser, the purchase price (the "**Purchase Price**") and any other material terms which the Seller proposes, including whether the Transfer Notice is conditional upon the Other Shareholder Parties taking up the offer to acquire all (and not part only) of the Seller's Shares ("**Total Transfer Condition**").

18.5 **Service of Transfer Notice by the Board**

The Board shall, within 10 days of receipt of the Transfer Notice, give a notice (an "**Offer Notice**") to all of the Other Shareholder Parties.

18.6 **Offer Notice**

An Offer Notice shall expire (i) if CWC has not served on the Government a notice in writing that it is considering a sale of its Shares (a "**Notice of Intention**") at any time within the 45 day period immediately preceding the date of the Offer Notice, 45 days after the service of the Offer Notice, or (ii) if a Notice of Intention has been served on the Government at any time

within the 45 day period immediately preceding the date of the Offer Notice, on the later of (a) 45 days after the service of the Notice of Intention and (b) 10 days after the service of the Offer Notice.

An Offer Notice shall:

- 18.6.1 specify the Purchase Price;
- 18.6.2 contain the other information set out in the Transfer Notice; and
- 18.6.3 invite the Other Shareholder Parties to apply in writing, before the expiry of the Offer Notice as set out above in this clause 18.6, to purchase the number of Shares specified by them in their application.

18.7 Acceptance

- 18.7.1 The Seller's Shares shall be offered to all Other Shareholder Parties (other than any Shareholder whose Shares are subject to a Deemed Transfer Notice pursuant to clause 20) in proportion to the total number of Shares held by the Other Shareholder Parties, save that if one of the Other Shareholder Parties is:
 - (a) the Government or a Governmental Body, the Government may direct the Company to offer all, or some only, of such Seller's Shares which would otherwise be offered to the Government or a Governmental Body pursuant to this clause 18.7 to another Governmental Body or Bodies (in such proportions as the Government may specify), and
 - (b) CWC or another CWC Group Member, any such CWC Group Member may direct the Company to offer all, or some only, of such Seller's Shares which would otherwise be offered to such CWC Group Member pursuant to this clause 18.7 to another Relevant Qualifying CWC Group Member or Members (in such proportions as such CWC Group Member may specify).
- 18.7.2 Other Shareholder Parties who accept the Offer shall be entitled to indicate that they would accept, on the same terms, Seller's Shares that have not been accepted by the Other Shareholder Parties (for the purpose of this clause 18, "**Excess Shares**").
- 18.7.3 To the extent that any Seller's Shares have not been accepted by Other Shareholder Parties during the period specified in 18.6, such Excess Shares shall be offered to those Other Shareholder Parties who have indicated that they would accept Excess Shares.
- 18.7.4 In the case of an Offer of Excess Shares the expiry date of the Offer Notice shall be extended by a further seven days.
- 18.7.5 Excess Shares shall be allocated pro rata to the aggregate number of Shares held by Other Shareholder Parties accepting Excess Shares provided that no such Other Shareholder Party shall be allotted more than the maximum number of Excess Shares that such Other Shareholder Party has indicated he is willing to accept.

18.8 Allocation

After the expiry date of the Offer Notice, (or, if earlier, after valid applications have been received for all the Seller's Shares in accordance with clause 18.7), the Board shall allocate the Seller's Shares in accordance with the applications received, subject to the other provisions of this Agreement and the Articles, save that:-

- 18.8.1 if there are applications from any Other Shareholder Parties for more than the number of Seller's Shares available, they shall be allocated to those applicants in proportion (as nearly as possible but without allocating to any Other Shareholder

Party more Seller's Shares than the maximum number applied for by him) to the number of Shares which entitles them to receive such offer then held by them respectively;

18.8.2 if it is not possible to allocate any of the Seller's Shares without involving fractions, they shall be allocated amongst the applicants in such manner as the Board shall think fit (acting reasonably); and

18.8.3 if the Transfer Notice contained a Total Transfer Condition, no allocation of Seller's Shares shall be made unless all the Seller's Shares are allocated.

18.9 Notice of Purchasers

Within 10 days of the expiry date of the last Offer Notice, the Board shall give notice in writing (a "**Sale Notice**") to the Seller and to each Other Shareholder Party to whom Seller's Shares have been allocated (each a "**Purchaser**") specifying the name and address of each Purchaser, the number of Seller's Shares agreed to be purchased by him and the total price payable for them and, subject to clause 18.10, the time for completion.

18.10 Completion

Completion of a sale and purchase of Seller's Shares pursuant to a Sale Notice shall (subject to any Regulatory Approvals required at law) take place at the registered office of the Company at the time specified in the Sale Notice, or if later, within five days of obtaining all Regulatory Approvals, required at law, on the terms set out in clause 18.12.

18.11 Seller's right to sell to Third Party Purchaser

If the Other Shareholder Parties do not exercise their rights to buy (or do not exercise their respective rights to direct an offer) under clause 18.7, or any notice given under that clause ceases to have effect pursuant to clauses 18.8.3 or 18.10, the Seller may (subject to clause 18.12 and subject to the obtaining of any Regulatory Approvals required at law) transfer the Seller's Shares (or, if the Transfer Notice was not subject to a Total Transfer Condition, the remaining part of the Seller's Shares not taken up by the Other Shareholder Parties) to a third party purchaser (the "**Third Party Purchaser**") at a price not less than the Purchase Price and on other terms that are not more favourable than the terms specified in the Transfer Notice provided that:

18.11.1 if the Seller is not the Government or any Governmental Body, and the Government (together with any Governmental Bodies) still holds at least 15% of the issued share capital of the Company, the Seller shall not be permitted to transfer the Seller's Shares to the Third Party Purchaser without the Government's prior written consent unless such purchaser is either:

- (a) an Established Telecommunications Company; or
- (b) a consortium in which an Established Telecommunications Company has a Substantial Economic and Operating Interest; and

18.11.2 the transfer is completed within 180 days after the latest of:

- (a) the date of the Transfer Notice; or
- (b) if any notice given by an Other Shareholder Party pursuant to clause 18.7 has ceased to have effect pursuant to clauses 18.8.3 or 18.10, the date on which that notice ceased to have effect.

18.12 Sale terms

The sale of any Seller's Shares under this clause 18 to any Other Shareholder Party shall be on the following terms (except as otherwise expressly set out in this clause 18):

- 18.12.1 the entire legal and beneficial interest in each of the Seller's Shares is transferred free from all Encumbrances and together with all rights of any nature attaching to them including all rights to any dividends or other distributions declared, paid or made after the date of the Transfer Notice;
- 18.12.2 the Seller and the relevant purchaser shall use all reasonable endeavours to procure that the Company and the other Shareholders are not adversely affected by the release of the Seller (as a result of, or in connection with, such sale) from any obligation or liability under or in respect of any guarantees, indemnities, letters of comfort and/or counter-indemnities to third parties in relation to the business of the Group;
- 18.12.3 the Seller shall deliver to the relevant purchaser duly executed transfer(s) in favour of the relevant purchaser, or as it may direct, together with the appropriate share certificate(s) in respect of the Seller's Shares (or an indemnity in respect of any missing certificate) and a certified copy of any authority under which such transfer(s) is/are executed;
- 18.12.4 against delivery of the transfer(s), the relevant purchaser shall pay the total consideration for the relevant Seller's Shares to the Seller by telegraphic transfer for value on the completion date;
- 18.12.5 the Company shall ensure (insofar as it is able) that the relevant transfer or transfers are registered in the name of the relevant purchaser or as it may direct;
- 18.12.6 the Seller shall do all such other things and execute all other documents (including any deed) as the relevant purchaser may reasonably request to give effect to the sale and purchase of the Seller's Shares;
- 18.12.7 if the purchaser is not an Other Shareholder Party the Seller shall procure that such purchaser enters into a Deed of Adherence within 10 days of the completion date (and the Company shall procure that a copy of the executed Deed of Adherence shall be provided to all the Other Shareholder Parties); and
- 18.12.8 the Seller shall forthwith procure the resignation of its respective appointees from the Board and any committees of the Company (to the extent its entitlement to appoint Directors pursuant to clause 5.3 has reduced) and shall ensure that such resignation takes effect without any liability on the Company for compensation for loss of office or otherwise.

18.13 Failure to transfer by Seller

If a Seller fails for any reason to transfer any Seller's Shares when required pursuant to this clause 18 (or, as applicable, clause 20):-

- 18.13.1 any Director may authorise any person (who shall be deemed to be irrevocably appointed as the attorney of that Seller for the purpose) to execute the necessary transfer of such Seller's Shares and deliver it on the Seller's behalf;
- 18.13.2 the Company may receive the purchase money for such Seller's Shares from the relevant purchaser and shall upon receipt (subject, if necessary, to any Regulatory Approvals required at law being obtained) register the relevant purchaser as the holder of such Seller's Shares;
- 18.13.3 the Company shall hold such purchase money in a separate bank account on trust for the Seller but shall not be bound to earn or pay interest on any money so held;
- 18.13.4 the Company's receipt for such purchase money shall be a good discharge to the relevant purchaser who shall not be bound to see to the application of it; and

18.13.5 after the name of the relevant purchaser has been entered in the register of members in purported exercise of the power conferred by this clause 18.13, the validity of the proceedings shall not be questioned by any person.

18.14 Permitted Transfer of Shares by the Government

18.14.1 Notwithstanding anything to the contrary in this Agreement or the Articles but subject to clause 18.14.2:

- (a) at any time between the Effective Date and the Third Anniversary, the Company shall, and CWC shall so far as it is able, procure that the Company shall, following service of a BISX Public Offer Notice, use its reasonable endeavours to procure that a BISX Share Admission occurs in respect of the number of Shares held by Governmental Bodies specified in the BISX Public Offer Notice provided that the aggregate number of Shares admitted or to be admitted to trading on BISX pursuant to this clause 18.14.1(a) shall not exceed 9% by nominal value of all the issued Shares in the Company (unless otherwise agreed by the Shareholder Parties);
- (b) at any time from the Third Anniversary, but no later than the Fiftieth Anniversary, the Company shall, and CWC shall so far as it is able, procure that the Company shall, following service of a BISX Public Offer Notice, use its reasonable endeavours to procure that a BISX Share Admission occurs in respect of the number of Shares held by Governmental Bodies specified in the BISX Public Offer Notice provided that the aggregate number of Shares admitted or to be admitted to trading on BISX pursuant to clause 18.14.1(a) and this clause 18.14.1(b) shall not exceed 25% by nominal value of all the issued Shares in the Company (unless otherwise agreed by the Shareholder Parties);
- (c) the Government may (having given not less than 10 days prior written notice to each Other Shareholder Party) at any time freely and without restriction transfer any of the Shares held by it to any other Governmental Body, which in turn may at any time freely and without restriction transfer any such Shares to any other Governmental Body or back to the Government; and
- (d) the restrictions in clause 18 shall not apply in relation to the transfer of such Shares referred to in (a), (b) or (c) above.

18.14.2 The Government shall procure that any person acquiring Shares pursuant to clause 18.14.1 who is not already party to this Agreement and is not a Minority Shareholder enters into a Deed of Adherence within 10 days of acquiring such Shares.

18.14.3 So as to facilitate a BISX Share Admission, CWC, the Company and the Government shall:

- (a) subject to such redaction as may be reasonably requested, use reasonable endeavours to consent to the disclosure of this Agreement or any of its terms, or any Confidential Information of the nature referred to in clause 28.1, to the extent required by BISX, the Securities Commission or the Rules in connection with the BSIX Share Admission;
- (b) subject to and without affecting any of the rights or benefits of any Party in this Agreement or the Articles, use reasonable endeavours to take such additional steps regarding, inter alia, the establishment of internal procedures and committees and the appointment of such external advisers at the cost of the Government as may be necessary to ensure that the Company is operating, as at the date of the BISX Share Admission, in accordance with the requirements for BISX admission;

- (c) subject to and without affecting any of the rights or benefits of any Party in this Agreement or the Articles, use reasonable endeavours to procure that the Government (and any Governmental Body) holding any of the relevant Shares being admitted to trading on BISX (the “**Relevant Shares**”) shall together be free to agree to sell or otherwise transfer, to Eligible Investors only, Relevant Shares in conjunction with and conditional on the listing on BISX; and
- (d) subject to and without affecting any of the rights or benefits of any Party in this Agreement or the Articles, procure that such additional persons are appointed as independent non-executive directors of the Company as are necessary in order to comply with the requirements of BISX or the Rules in connection with the admission of such Shares (provided that, for so long as CWC (together with other CWC Group Members) owns more than 50% of the Company’s issued share capital, CWC continues, post-appointment of the independent non-executive directors, to have the right to appoint the majority of the members of the Board);
- (e) subject to and without affecting any of the rights or benefits of any Party in this Agreement or the Articles, take such additional steps (including, if necessary, the admission to trading on BISX of Shares other than the Relevant Shares) in relation to the Company as are reasonably requested by the Government in order to comply with the eligibility requirements of BISX, the Securities Commission or the Rules in connection with the admission of the Relevant Shares.

18.14.4 Upon all or any number of the Relevant Shares being admitted to trading on BISX pursuant to a request by the Government pursuant to clause 18.14.1:

- (a) CWC shall not, and shall procure that no other CWC Group Member shall, acquire or agree to acquire or otherwise purchase any Relevant Shares or, whether through any nominee or otherwise, any interest in any Relevant Shares, which have been admitted to trading on BISX (except where such Relevant Shares are acquired or purchased for the purpose of a share incentive plan open only to the employees of Group Members and limited to such amount as is approved by the Board from time to time (but subject to any Regulatory Approvals and to clause 18.1.2)); and
- (b) CWC and the Government undertake to use all reasonable endeavours in each case to the extent to which it is able to procure that the Company complies with its ongoing reporting and other continuing obligations under the requirements of BISX, the Securities Commission and the Rules.

18.15 Permitted Transfers of Shares by CWC

18.15.1 Notwithstanding anything to the contrary in this Agreement or the Articles, but subject to clause 18.15.2:

- (a) CWC or any CWC Group Member may (having given not less than 10 days prior written notice to each Other Shareholder Party) at any time (subject to any Regulatory Approvals required at law but, otherwise freely and without restriction) transfer any of the Shares held by it to any other Relevant Qualifying CWC Group Member, provided that if the transferee ceases to be a Relevant Qualifying CWC Group Member, such former Relevant Qualifying CWC Group Member shall (and CWC shall procure that former Relevant Qualifying CWC Group Member shall) promptly transfer any Shares held by it to CWC or to any other Relevant Qualifying CWC Group Member;
- (b) notwithstanding and without prejudice to clause 18.15.1(a), CWC or any CWC Group Member may (having given not less than 10 days prior written notice to each Other Shareholder Party) at any time (subject to any

Regulatory Approvals required at law, but otherwise freely and without restriction) transfer any of the Shares held by it to any other Relevant CWC Group Member provided that, whilst the Government (together with any Governmental Bodies) still holds at least 15% of the issued share capital of the Company, CWC or such CWC Group Member obtains the Government's prior consent to such transfer and further provided that if the transferee ceases to be a CWC Group Member, such former CWC Group Member shall (and CWC shall procure that former CWC Group Member shall) promptly transfer any Shares held by it to CWC or to any other Relevant Qualifying CWC Group Member; and

- (c) the restrictions in clause 18 shall not apply in relation to the transfer of such Shares referred to in 18.15.1(a) or 18.15.1(b) above.

18.15.2 CWC shall procure that any CWC Group Member acquiring Shares pursuant to clause 18.15.1 (or otherwise) enters into a Deed of Adherence within 10 days of acquiring such Shares.

18.16 Tag-along

In the event the Seller is CWC and/or other members of the CWC Group, there shall be no transfer of any Shares to a Third Party Purchaser unless the Third Party Purchaser has, at the time of the transfer by CWC and/or other members of the CWC Group of any Shares to a Third Party Purchaser, made or procured to be made an irrevocable offer (stipulated to be open for acceptance for at least 30 days) to purchase all the other Shares in issue at a price not less than the Purchase Price, on other terms that are no less favourable than the terms specified in the Transfer Notice and without requiring the holders of the Shares to give any warranties, representations or indemnities (other than as to title to such Shares), and has completed the transfer of any Shares in respect of which such offer is accepted. The other provisions of this clause 18 shall not apply to any transfer of shares made pursuant to such offer.

19 LISTING

Without prejudice to the provisions of clauses 18.14.1(a) and 18.14.1(b), the Government may at any time after the Fifth Anniversary (if the Government holds at least 15% of the issued share capital of the Company) require the Board to consider and if thought appropriate, in the Board's absolute discretion and with the agreement in writing of the Shareholder Parties, instruct an internationally recognised firm of financial advisers regarding a proposal to quote all or any part of the Shares (whether directly or indirectly) on any Relevant Exchange.

20 DEFAULT AND THE RIGHT FOR GOVERNMENT TO REQUIRE A SALE OF SHARES HELD BY CWC GROUP MEMBERS

20.1 General

20.1.1 If any Party ("**Defaulting Party**") commits a material or persistent breach of this Agreement ("**Default**"), any other Party may serve notice upon the Defaulting Party. The notice shall specify the breach and require the Defaulting Party immediately to stop the breach and, to the extent that it is possible, to remedy the breach within 45 days ("**Remedy Period**").

20.1.2 CWC shall promptly notify the Government (if the Government then holds at least 15% of the Company's issued share capital) upon the occurrence of any Insolvency Event, Change of Control or Ownership or Default by CWC or any other CWC Group Member, in each case giving all reasonable details of the same.

20.1.3 The Government shall promptly notify CWC (if CWC then holds at least 15% of the Company's issued share capital) upon the occurrence of any Default by the Government or any other Governmental Body, giving all reasonable details of the same.

20.2 **Right of Government to require a sale of Shares held by CWC Group Members**

At any time before the expiry of a period of 60 days of:

- 20.2.1 in respect of any Insolvency Event or Change of Control or Ownership, the date on which the Government is notified by CWC pursuant to clause 20.1.2 of such Insolvency Event or Change of Control or Ownership; and
- 20.2.2 in respect of any Unremedied Default relating to any CWC Group Member, the date on which the relevant Remedy Period expires,

the Government may (if it then holds at least 15% of the Company's issued share capital) serve notice on CWC requesting that CWC (together with any other CWC Group Member which has acquired Shares) offers up its Shares for sale in accordance with this clause 20.

20.3 **Deemed Transfer Notice**

Upon the service of a notice pursuant to clause 20.2, CWC, and any other CWC Group Member who has acquired Shares from CWC under clause 18 (either directly or by means of a series of two or more transfers permitted under such clause), shall be deemed to have immediately given a Transfer Notice in respect of all the Shares then held by such Shareholder(s) (a "**Deemed Transfer Notice**", which expression includes a Transfer Notice given under clause 18.4).

20.4 **Persons included under Deemed Transfer Notice**

For the purpose of clauses 20.3 and 20.5, any Shares received by way of rights or on a capitalisation by any person to whom Shares may have been transferred (directly or by means of a series of two or more transfers permitted under clause 18) shall also be treated as included within the Deemed Transfer Notice.

20.5 **Effect on any existing Transfer Notice**

A Deemed Transfer Notice shall supersede and cancel any then current Transfer Notice insofar as it relates to the same Shares except for Shares which have then been validly transferred pursuant to that Transfer Notice.

20.6 **Procedure for sale**

The Shares the subject of a Deemed Transfer Notice shall be offered for sale in accordance with clause 18 (and all the relevant provisions of such clause) as if they were Seller's Shares in respect of which a Transfer Notice had been given and treating as the Seller the person who is deemed to have given the Deemed Transfer Notice save that:-

- 20.6.1 the Purchase Price shall be:
 - (a) a price agreed between the Seller and the Other Shareholder Parties; or
 - (b) in default of agreement within 20 days after the service of the Deemed Transfer Notice the price reported on by an internationally-recognised, independent and reputable valuer (the "**Expert**") as its written opinion of the fair price of the Seller's Shares as at the date of service of the Transfer Notice (calculated in accordance with clause 20.7),

provided that at all times the Sale Price in respect of a Deemed Transfer Notice shall not exceed the greater of:
 - (i) a sum equal to 24.99% of CWC plc's Market Capitalisation at the close of business in London on the Effective Date; and
 - (ii) a sum equal to 24.99% of CWC plc's Market Capitalisation at the close of business in London on the date of the Deemed Transfer Notice.

- 20.6.2 a Deemed Transfer Notice shall be deemed not to contain a Total Transfer Condition and shall be irrevocable; and
- 20.6.3 the Seller may retain any Seller's Shares in respect of which purchasers are not found.

20.7 Reference to Expert

The following principles shall apply in respect of a determination of fair price by the Expert:

- 20.7.1 unless the Other Shareholder Parties agree otherwise, the Expert shall be a firm which is independent of all Other Shareholder Parties;
- 20.7.2 if the Seller and the Other Shareholder Parties cannot agree on the firm within 20 days after the date of the Deemed Transfer Notice, the President for the time being of the International Chamber of Commerce shall appoint the Expert upon the application of any Other Shareholder Party;
- 20.7.3 the Other Shareholder Parties and the Company shall ensure that the Expert has such information relating to the Company as it reasonably requires in order to determine the fair price;
- 20.7.4 in certifying the fair price, the Expert shall take into account all factors it considers to be relevant;
- 20.7.5 the Expert shall act as an expert and not an arbitrator;
- 20.7.6 if the Other Shareholder Parties subsequently acquire all of the Shares subject to the Deemed Transfer Notice, the Seller shall bear the cost of obtaining the Expert's certificate (for the purposes of this clause 20, the "**Certificate**"), and otherwise the cost of obtaining the Certificate shall be borne equally by the Other Shareholder Parties; and
- 20.7.7 the Certificate shall be issued to the Seller, the Other Shareholder Parties and the Company.

21 FURTHER ASSURANCE

So far as it is legally able, each Shareholder Party agrees with each other Shareholder Party to exercise all voting rights and powers (direct or indirect) available to it in relation to any person and/or the Company to ensure that the provisions of this Agreement (and the other agreements referred to in this Agreement) are completely and punctually fulfilled, observed and performed and generally that full effect is given to the principles set out in this Agreement.

22 NO PARTNERSHIP OR AGENCY

- 22.1 Nothing in this Agreement (or any of the arrangements contemplated by it) is or shall be deemed to constitute a partnership between the Parties nor, except as may be expressly set out in it, constitute any Party the agent of any other for any purpose.
- 22.2 Unless the Parties agree otherwise in writing, none of them shall:
- (a) enter into any contracts or commitments with third parties as agent for any Group Member or for any other Party; or
 - (b) describe itself as such an agent or in any way hold itself out as being such an agent.

23 CONFLICT WITH ARTICLES

If the provisions of this Agreement conflict with the Memorandum or the Articles or the Company's other constitutional documents, or those of any other Group Member, the provisions of this Agreement shall prevail as between the Shareholders. The Shareholders shall:

- (a) exercise all voting and other rights and powers available to them to give effect to the provisions of this Agreement; and
- (b) (if necessary) ensure that any required amendment is made to the Memorandum or the Articles or other constitutional document of the Company or any other Group Member.

24 TERMINATION OF AGREEMENT

- 24.1 This Agreement shall continue in full force and effect until the first of the following dates to occur:
- 24.1.1 the date on which either the Government or any Governmental Body (and their permitted successors or assigns) or CWC or any other CWC Group Member (and their permitted successors or assigns) cease to hold any Shares;
 - 24.1.2 the date of the dissolution of the Company following its winding-up; or
 - 24.1.3 the date with effect from which the Shareholders agree it shall be terminated.
- 24.2 In the event that this Agreement is terminated then, without prejudice to the accrued rights of the parties arising under any provision of this Agreement, and except for the provisions of clauses 1 (Definitions and Interpretation), 17 (Pensions), 27 (Announcements), 28 (Confidentiality), 29 (Costs), 31 (Entire Agreement), 32 (Notices), 34 (Invalidity), 35 (Waiver of Sovereign Immunity), 36 (Governing Law) and 37 (Disputes), which shall continue in full force and effect, this Agreement shall cease to have effect.

25 ASSIGNMENT

- 25.1 Save as provided for in this clause 25, no Party shall without the prior written consent of the other Parties assign, transfer or otherwise delegate (in whole or in part) or charge or deal in any manner with the benefit of or the rights under this Agreement.
- 25.2 The Government (and any permitted assignee of the Government as provided below) may at any time assign and transfer all or any of its rights and/or obligations under this Agreement to any Relevant Governmental Body (provided that, in respect of the obligations set out in clause 17, such Relevant Governmental Body has the power and resources (including financial) to meet such obligations) or, subject to clauses 25.3 to 25.6, to any other person to whom it properly transfers any Shares pursuant to and in accordance with the provisions of this Agreement and the Articles.
- 25.3 The Government shall not be permitted, without the prior written consent of CWC, to assign or transfer:
- 25.3.1 the benefits and rights contained in clause 12.2.2;
 - 25.3.2 those benefits, rights and obligations set out in clause 17;
 - 25.3.3 the benefits and rights contained in clause 18.11.1;
 - 25.3.4 the benefits and rights contained in clauses 18.14.1(a) and 18.14.1(b);
 - 25.3.5 the benefits and rights in respect of clauses 2.1, 8.1.2(a), 8.1.2(b), 8.3.9 and 8.3.16; or
 - 25.3.6 the benefits and rights contained in clause 18.14.4(a).
- 25.4 The Government shall not be permitted, without the prior written consent of CWC, to assign or transfer:
- 25.4.1 the benefits and rights set out in clause 20 to require a sale of the Shares held by CWC Group Members; or

25.4.2 the benefits and rights contained in clause 18.15.1(b),

unless the relevant assignee or transferee acquires not less than 15% of the entire issued share capital of the Company and such transferee grants to CWC equivalent rights over that transferee's Shares in the relevant Deed of Adherence (save that if the shares of such transferee are not admitted to trading on a Relevant Exchange, the transferee shall not be required to offer a cap on the Sale Price in the equivalent provision to clause 20.6.1).

25.5 The benefits and rights under clause 8.2 may only be exercisable by one entity at any one time and may not be exercised by any person acquiring Shares solely pursuant to clause 18.14.1(a) or 18.14.1(b).

25.6 Where the Government has transferred Shares representing at least 15% of the Company's issued capital for the time being to a third party and the Government itself (together with other Governmental Bodies) still holds at least 15% of the Company's issued capital for the time being, it shall be entitled by serving notice in writing on the Company and CWC to specify which Shareholder has the right to exercise the benefits and rights under clause 8.2.

25.7 CWC (and any permitted assignee of CWC as provided below) may at any time assign and transfer all or any of its rights and/or obligations under this Agreement to any person to whom it properly transfers any Shares in the Company pursuant to and in accordance with the provisions of this Agreement and the Articles.

25.8 Subject always to this clause 25, any permitted assignee under this clause 25 shall be entitled to enforce and be bound by the terms of this Agreement with effect from the date of assignment as if it were a Party to this Agreement. For the avoidance of doubt, until a person becomes a permitted assignee, it shall not be entitled to enforce any term of this Agreement whether as a third party or otherwise.

25.9 Nothing in this clause 25 shall prohibit the Government from agreeing with any third party how to exercise the Government's rights under this Agreement.

26 **SUCCESSORS AND ASSIGNS**

Subject always to clause 25, this Agreement shall be binding on and enure for the benefit of the successors and permitted assigns of the Parties.

27 **ANNOUNCEMENTS**

27.1 **Consultation**

Prior to any announcement concerning the matters provided for in this Agreement being made or issued by or on behalf of any CWC Group Member or the Government or any Governmental Body, CWC (in the case of any member CWC Group Member) or the Government (in the case of the Government or any Governmental Body) shall, to the extent permitted by Applicable Law, consult with CWC or the Government (as appropriate) and give such other party every reasonable opportunity to comment on any such announcement or release before it is made or issued.

27.2 **No time limit**

The restriction in clause 27.1 shall apply after the Effective Date without limit of time.

28 **CONFIDENTIALITY**

28.1 **Confidentiality obligation**

Subject to clause 28.2, each Party (each, for the purpose of this clause 28, a "**Recipient**") undertakes that it shall use, from the date of this Agreement and both during and after the term of this Agreement, all reasonable endeavours to keep confidential (and to ensure that its officers, employees, agents and professional and other advisers keep confidential) any information which it may have or acquire before or after the date of this Agreement: (i) in

relation to the Company's customers, business, employees, assets or affairs (including, without limitation, any information provided pursuant to clause 11); or (ii) in relation to the Company which forms part of any Contractual Document and which is expressly marked as commercially sensitive.

No Recipient shall directly or indirectly use for its own business purposes or disclose to any third party any such information (collectively, "**Confidential Information**") without the prior written consent of the other Parties.

28.2 **Exceptions from confidentiality obligation**

The obligation of confidentiality under clause 28.1 does not apply:

28.2.1 where such information enters the public domain (otherwise than as a result of a breach by any of the parties of their respective obligations in this clause 28);

28.2.2 if and to the extent:

- (a) the disclosure is made (subject to clause 28.3) on a 'need to know' basis to a body which is another Governmental Body or to a company which is another CWC Group Member (as the case may be) where the disclosure is for a purpose reasonably incidental to this Agreement;
- (b) the information has been independently developed by the relevant Recipient or acquired from a third party to the extent that it is acquired with the right to disclose the same;
- (c) the disclosure is made (subject to clauses 28.3 and 28.4) only to the Recipient's professional advisers in confidence;
- (d) disclosure is required for the purpose of any other agreement entered into under or pursuant to this Agreement or the Recipient is reasonably required to disclose the information to a Tax Authority (as defined in the Sale and Purchase Agreement) for the purposes of its Tax affairs; or
- (e) the information is required to be disclosed by any applicable laws, any stock exchange regulation, any binding judgment, any order or requirement of any court or other competent authority or disclosed in response to a requirement of any other applicable regulatory authority or regulatory, governmental or fiscal body (including any self-regulatory organisation),

provided that any such information used or disclosable pursuant to this clause 28.2.2 shall, so far as reasonably practicable and, to the extent permitted by Applicable Law, be used or disclosed only after consultation with the Government or CWC (as appropriate) and after giving such other party reasonable opportunity to comment on any such disclosure before it is made.

28.3 **Employees, agents and advisers**

Each Recipient shall inform any officer, employee or agent of it, or any professional or other adviser or other body referred to in clause 28.2.2(a) advising it in relation to the matters referred to in this Agreement (including without limitation the Pension Plan or the Feeder Trust), to whom it provides Confidential Information, that such information is confidential and shall instruct them:

28.3.1 to keep it confidential; and

28.3.2 not to disclose it to any third party (other than those persons to whom it has already been disclosed in accordance with the terms of this Agreement).

The disclosing Recipient is responsible for any breach of this clause 28 by the person to whom the Confidential Information is disclosed.

28.4 Return of Confidential Information

If this Agreement terminates, any Party may by notice require any Recipients to return the disclosing Party's Confidential Information. If so, the Recipients shall:

28.4.1 return or destroy all documents containing Confidential Information which have been provided by or on behalf of the Party demanding the return of that Confidential Information; and

28.4.2 destroy any copies of such documents and any document or other record reproducing, containing or made from or with reference to the Confidential Information,

(save, in each case, for any Confidential Information which is contained in or required for any submission to or filings with governmental, tax or regulatory authorities). The Recipients shall return or destroy the Confidential Information as soon as practicable after receiving notice.

28.5 Survival after termination

The provisions of this clause 28 shall continue to apply if this Agreement is terminated.

29 COSTS

Save as expressly provided in this Agreement, all expenses incurred by or on behalf of the Parties, including all fees of professional advisers employed by any of the Parties in connection with the negotiation, preparation and execution of this Agreement shall be borne solely by the Party which incurred them.

30 AMENDMENTS

30.1 Amendments

No amendment or variation of this Agreement or any of the other agreements, documents and/or deeds required to be entered into by the Parties at or prior to the Effective Date in connection with and/or pursuant to this Agreement, shall be effective unless it is in writing and signed by or on behalf of each of the Parties. References in this Agreement to documents "in the agreed form" shall, where appropriate, be construed as references to such documents as so amended.

30.2 Waivers and remedies

30.2.1 The rights and remedies of each Party under this Agreement may be waived only in writing and specifically.

30.2.2 Delay in the exercise or non-exercise of any right or remedy under this Agreement is not a waiver of that right or remedy.

30.2.3 Partial exercise of any right or remedy under this Agreement shall not preclude any further or other exercise of that right or remedy or any other right or remedy under this Agreement.

30.2.4 Waiver of a breach shall not operate as a waiver of any subsequent breach.

31 ENTIRE AGREEMENT

31.1 The Parties agree that:

31.1.1 this Agreement together with the other documents referred to in this Agreement that exist as at the Effective Date (together the "**Contractual Documents**") constitute the entire agreement between the Parties with respect to the subject matter of it;

- 31.1.2 none of them have been induced to enter into any Contractual Document in reliance upon, nor have they been given, any warranty, representation, statement, agreement or undertaking of any nature whatsoever other than as are expressly set out in the Contractual Documents and, to the extent that any of them have been the relevant Party unconditionally and irrevocably waives any claims, rights or remedies which it might otherwise have had in relation thereto and any right to terminate this Agreement for any reason; and
- 31.1.3 the only remedies available to the Parties in respect of the Contractual Documents are damages for breach of contract and, for the avoidance of doubt (but subject as expressly stated to the contrary in this Agreement), no Party shall have any right to rescind or terminate any Contractual Document either for breach of contract or for negligent or innocent misrepresentation or otherwise;

provided that this clause 31 shall not exclude any liability which any Party would otherwise have to any other Party or any right which any of them may have to rescind this Agreement in respect of any statements made fraudulently by any other Party prior to the execution of this Agreement or any rights which any of them may have in respect of fraudulent concealment by such other Party.

32 NOTICES

32.1 Writing

All notices between the Parties with respect to this Agreement shall be in writing and signed by the Party giving it.

32.2 Service

Any notice referred to in this clause 32, shall be served by delivering it:

- 32.2.1 by hand;
- 32.2.2 by sending it by pre-paid post, registered delivery or (in respect of a notice being sent overseas) airmail; or
- 32.2.3 by fax,

to the address of the addressee set out below, or to such other address as the addressee may from time to time have notified for the purpose of this clause.

32.3 Deemed delivery

A notice shall take effect from the time received or, if earlier, the time of deemed receipt in accordance with this clause, unless a later time is specified in it. Notices shall be deemed to have been received:

- 32.3.1 if delivered by hand, at the time of delivery;
- 32.3.2 if sent by pre-paid post or registered delivery, two business days after posting exclusive of the day of posting;
- 32.3.3 if delivered by air mail, five business days after posting exclusive of the day of posting; or
- 32.3.4 if sent by fax, at the time of transmission unless received after normal office hours in the place of receipt in which case it shall be deemed to have been received on the next business day in the place of receipt.

32.4 Proof of service

In proving service:

- 32.4.1 of delivery by hand, it shall be necessary only to produce a receipt for the communication signed by or on behalf of the addressee;
- 32.4.2 by post, it shall be necessary only to prove that the communication was contained in an envelope which was duly addressed and posted in accordance with this clause; and
- 32.4.3 by fax, it shall be necessary only to produce the sender's transmission slip bearing the addressee's fax number showing the fax received by the addressee.

32.5 **Addresses for notices**

The addresses and fax numbers of the Parties for the purposes of this clause are:

Government

Address: Ministry of Finance
3rd Floor Cecil Wallace Whitfield Centre
West Bay Street
Cable Beach
New Providence
P.O. Box N-3017
Nassau, The Bahamas

For the attention of: The Financial Secretary

Fax number: +1 242 327 1618

CWC

Address: 3rd Floor, 26 Red Lion Square, London WC1R 4HQ

For the attention of: Company Secretary of CWC plc

Copy to: Head of Legal and Regulatory of CWC plc

Fax number: + 44 207 315 5211

Company

Address: John F Kennedy Drive, PO Box N-3048, Nassau, Bahamas

For the attention of: The Chief Executive Officer

Fax number: +1 242 326 8423

Guarantor

Address: 3rd Floor, 26 Red Lion Square, London WC1R 4HQ

For the attention of: Company Secretary of CWC plc

Copy to: Head of Legal and Regulatory of CWC plc

Fax number: + 44 207 315 5211

32.6 **No electronic transmission**

Any notice given under this Agreement shall not be validly served if sent by electronic mail, by text messaging via mobile telephone or other electronic means other than fax.

33 COUNTERPARTS

33.1 Execution in counterparts

This Agreement may be executed in any number of counterparts and by the Parties to it on separate counterparts, but shall not be effective until each Party has signed at least one counterpart.

33.2 One Agreement

Each counterpart shall constitute an original of this Agreement but all counterparts shall together constitute one and the same agreement.

34 INVALIDITY

34.1 If any provision in this Agreement is or is held to be illegal, invalid or unenforceable, in whole or in part, the provision shall apply with whatever deletion or modification is necessary so that the provision is legal, valid and enforceable and gives effect to the commercial intention of the Parties.

34.2 To the extent it is not possible to delete or modify the provision, in whole or in part, under clause 34.1, then such provision or part of it shall, to the extent that it is illegal, invalid or unenforceable, be deemed not to form part of this Agreement and the legality, validity and enforceability of the remainder of this Agreement shall, subject to any deletion or modification made under this clause 34.2, not be affected.

35 WAIVER OF SOVEREIGN IMMUNITY

35.1 If the Government or any of its property or assets is or are entitled in any jurisdiction to any immunity from service of process or of other documents relating to proceedings under any Contractual Documents to which it is a party ("**Proceedings**") or to any immunity from jurisdiction, suit, judgment, execution, attachment (whether before judgment, in aid of execution or otherwise) or other legal process, this is irrevocably waived to the fullest extent permitted by the law of that jurisdiction save and except immunity from execution and attachment as provided at section 19(4) of the Crown Proceedings Act (Chapter 68) Statute Law of The Bahamas 2000 (the "**CPA**"). The Government also irrevocably agrees not to claim, save and except as provided in this clause 35, any such immunity for itself or its property or assets. This waiver and agreement have, and are intended to have, irrevocable effect.

35.2 Accordingly, the Government consents (but subject to clauses 31.1.3 and 37) generally to the issue of any process in connection with any Proceedings and to the giving of any type of relief or remedy against it, save and except as provided in section 14 and section 19(4) of the CPA. Subject to clause 35.1, such consent is without prejudice to the right of the Government to defend itself in respect of any such Proceedings.

36 GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of The Bahamas.

37 DISPUTES

Any dispute arising out of or in connection with this Agreement whether contractual or non-contractual, including any question regarding its existence, validity or termination, which is not resolved by the relevant parties within 45 days of notice of such dispute being served in accordance with the terms of this Agreement, shall be referred to and finally resolved by arbitration under the London Court of International Arbitration Rules, such rules being deemed to be incorporated by reference into this clause, and shall be governed by the provisions of the Arbitration Act 2009 of The Bahamas. It is further agreed that:

37.1 the number of arbitrators shall be three, unless the Parties agree to a single arbitrator;

- 37.2 in default of the Parties' agreement as to the arbitrators, the appointing authority shall be the London Court of International Arbitration;
- 37.3 the seat, or legal place, of arbitration shall be Nassau, New Providence, The Bahamas;
- 37.4 the language to be used in the arbitral proceedings shall be in English; and
- 37.5 to the extent permitted by the law of the seat of the arbitration, the parties shall be taken to have waived any right of appeal or review of the award of the arbitration to any court of law.

38 AGENT FOR SERVICE OF PROCESS

- 38.1 The Guarantor hereby irrevocably appoints CWC at the registered address set out above as its agent for service of process for the purposes of any arbitration referred to in clause 37. Any notice served on or given to the Guarantor in connection with any such proceedings shall be copied at the same time by the party serving or giving such notice to CWC to the address details given in clause 32.5 of this Agreement.
- 38.2 The Guarantor may appoint a replacement agent having an address for service in the Bahamas at any time by notice in writing to the Government.

AS WITNESS this Agreement has been signed by the duly authorised representatives of the Parties as a deed on the day and year first before written.

SCHEDULE 1
THE COMPANY
Part 1
(THE COMPANY)

(i)	Administrative Office:	John F Kennedy Drive, PO Box N-3048, Nassau, The Bahamas
(ii)	Date of Incorporation:	14 June 2001
(iii)	Country of Incorporation:	The Commonwealth of The Bahamas
(iv)	Registered Number:	48750
(v)	Auditors:	PricewaterhouseCoopers
(vi)	Accounting Reference Date:	31 December
(vii)	Authorised Share Capital:	B\$254,664,000 divided into 254,664,000 Shares of B\$1 each
(viii)	Issued Share Capital:	B\$254,664,000 divided into 254,664,000 Shares of B\$1 each

Part 2

(THE SHAREHOLDERS)

Name	Address	Shares of B\$1.00 each	Percentage shareholding
The Treasurer of The Commonwealth of The Bahamas	Ministry of Finance 3 rd Floor Cecil Wallace Whitfield Centre West Bay Street Cable Beach New Providence P.O. Box N-3017 Nassau, The Bahamas	124,785,360	49%
CWC	Fort Nassau Centre Marlborough Street P.O. Box N-4875 Nassau, New Providence The Bahamas	129,878,640	51%

SCHEDULE 2

TERMS OF REFERENCE OF THE AUDIT COMMITTEE

1 CONSTITUTION

The purpose of the audit committee ("**Audit Committee**") is:

- 1.1 to determine and apply policy on behalf of the Board to the financial reporting and internal control principles of the Company; and
- 1.2 to maintain an appropriate relationship with the Company's auditors.

2 MEMBERSHIP

- 2.1 The membership of the Audit Committee shall at all times reflect the constitution of the board of the Company for the time being.
- 2.2 Each Shareholder may remove and/or replace their respective nominee member(s) of the Audit Committee.
- 2.3 Upon a Shareholder ceasing to have the right to appoint a director of the Company, such Shareholder shall procure the resignation of its respective nominee member(s) from the Audit Committee.
- 2.4 The Chairman of the Audit Committee shall be appointed by the Board from time to time but shall have no second or casting vote.
- 2.5 Only members of the Audit Committee shall have the right to participate in Audit Committee meetings. However, other individuals such as the CEO and the CFO and external advisers may be invited by any member of the Audit Committee to attend for all or part of any meeting, as and when appropriate.

3 SECRETARY

The Secretary shall act as the secretary of the Audit Committee.

4 QUORUM

The quorum necessary for the transaction of business by the Audit Committee shall be two members, which must include a member appointed by each Shareholder entitled to appoint a nominee member. A duly convened meeting of the Audit Committee at which a quorum is present shall be competent to exercise all or any of the authorities, powers and discretions vested in or exercisable by the Audit Committee by majority decision.

5 FREQUENCY OF MEETINGS

The Audit Committee shall meet at such times as the Chairman of the Audit Committee shall require and, in any event, not fewer than four times per year.

6 NOTICE OF MEETINGS

- 6.1 Meetings of the Audit Committee shall be summoned by the Secretary at the request of the Chairman of the Audit Committee.
- 6.2 Unless otherwise agreed, notice of each meeting confirming the venue, time and date, together with an agenda of items to be discussed, shall be forwarded to each member of the Audit Committee, and any other person required to attend, no later than five business days before the date of the meeting. Supporting papers shall be sent to Audit Committee members and to other attendees as appropriate, at the same time.

7 **MINUTES OF MEETINGS**

- 7.1 The Secretary shall minute the proceedings and resolutions of all Audit Committee meetings, including the names of those present and in attendance.
- 7.2 Minutes of Audit Committee meetings shall be circulated promptly to all members of the Audit Committee and, once agreed, to all other members of the Board, unless a conflict of interest exists, in which case the minutes shall not be circulated to conflicted directors.

8 **DUTIES**

- 8.1 The Audit Committee shall:
- 8.1.1 report to and advise the board of the Company on all questions of external and internal audit, financial statements, systems and controls;
 - 8.1.2 check that the assets of the Company and the interests of Shareholders are properly safeguarded;
 - 8.1.3 check that the Company's accounting principles are appropriate and that the relevant accounting standards are followed;
 - 8.1.4 ensure that the levels of prudence and judgment exercised are appropriate;
 - 8.1.5 ensure that the Company complies with applicable statutory and regulatory requirements; and
 - 8.1.6 consider and investigate any matters specifically identified by the Company's auditors.
- 8.2 It should be noted that the existence and activities of the Audit Committee shall not detract from or qualify in any way the collective responsibility of the board of the Company for financial and audit matters, including all published financial information.

9 **REPORTING RESPONSIBILITIES**

The Chairman of the Audit Committee shall report formally to the board of the Company on its proceedings after each meeting.

10 **OTHER**

The Audit Committee may review its own performance, constitution and terms of reference to ensure it is operating at maximum effectiveness and recommend any changes it considers necessary to the Shareholders for unanimous approval.

11 **AUTHORITY**

- 11.1 The Audit Committee is authorised to seek any information it requires from any employee of the Company in order to perform its duties.
- 11.2 The Audit Committee is authorised to obtain, at the Company's expense, outside legal or other professional advice on any matters within its terms of reference.

SCHEDULE 3
DEED OF ADHERENCE

THIS DEED OF ADHERENCE is made on []

BY:

[], a [company/corporation] [limited by shares] [incorporated under the laws of []], with registered number [] and whose principal place of business is at [] (the "[**Transferee**]/[**Allottee**]").

WHEREAS:

- (A) [[] (the "**Transferor**") intends to transfer to the Transferee [] Shares in the capital of The Bahamas Telecommunications Company Limited (the "**Company**") / [The Allottee wishes to subscribe for [] Shares in the capital of the Bahamas Telecommunications Company Limited (the "**Company**")].
- (B) Pursuant to clause [] of the shareholders' agreement made between (1) the Government, (2) CWC, (3) the Company and (4) the Guarantor, as such agreement shall have been or may be amended, supplemented or novated from time to time (the "**Shareholders' Agreement**"), the [Transferee]/[Allottee] has entered into this Deed.

IT IS AGREED as follows:

1 INTERPRETATION

Words and phrases defined in the Shareholders' Agreement shall have the same meanings when used in this Deed.

2 BENEFIT OF DEED

This Deed is made for the benefit of (a) the original parties to the Shareholders' Agreement and (b) any other person or persons who after the date of the Shareholders' Agreement become a party thereto (and whether or not prior to or after the date of this Deed) (the "**Continuing Parties**").

3 ADHERENCE

The [Transferee]/[Allottee] hereby undertakes to comply with the provisions of and to perform all the obligations in the Shareholders' Agreement so far as they may remain to be observed and performed as at and from the date of this Deed.

4 [TRANSFEEE]/[ALLOTTEE] TO BECOME PARTY

The Transferee shall become a Party to the Shareholders' Agreement as if the [Transferee]/[Allottee] were named in the Shareholders' Agreement as a Shareholder [and, subject always to clause 25 of the Shareholders' Agreement, shall be deemed from the date hereof to have the same rights previously held by the Transferor.]

5 GOVERNING LAW

This Deed shall be governed by and construed in accordance with the laws of The Bahamas and the parties hereby agree that any dispute arising out of or in connection with this Deed whether contractual or non-contractual, including regarding its existence or validity shall be referred to and finally resolved by arbitration under the London Court of International Arbitration Rules, such rules being deemed to be incorporated by reference into this clause, and shall be governed by the provisions of the Arbitration Act 2009 of The Bahamas. It is further agreed that:

- 5.1 the number of arbitrators shall be three, unless the Parties agree to a single arbitrator;
- 5.2 in default of the Parties' agreement as to the arbitrators, the appointing authority shall be the London Court of International Arbitration;
- 5.3 the seat, or legal place, of arbitration shall be Nassau, New Providence, The Bahamas;
- 5.4 the language to be used in the arbitral proceedings shall be in English; and
- 5.5 to the extent permitted by the law of the seat of the arbitration, the parties shall be taken to have waived any right of appeal or review of the award of the arbitration to any court of law.

6 AGENT FOR SERVICE OF PROCESS

- 6.1 [The Transferee]/[Allottee] hereby irrevocably appoints [●] at the registered address of [●] as its agent for service of process for the purposes of any arbitration referred to in clause 5 above or clause 37 of the Shareholders Agreement.
- 6.2 [The Transferee]/[Allottee] may appoint a replacement agent having an address for service in the Bahamas at any time by notice in writing to the Government.

IN WITNESS whereof this Deed has been duly entered into on the date first above written.

[Appropriate execution blocks to be added]

SCHEDULE 4

CLOSURE OF THE PENSION PLAN TO NEW ENTRANTS

THIS DEED OF AMENDMENT is made on []

BY:

- (1) **THE BAHAMAS TELECOMMUNICATIONS COMPANY LIMITED** a company incorporated under the laws of The Bahamas with registered number 48750 and whose principal place of business is at John F Kennedy Drive, PO Box N-3048, Nassau, The Bahamas (the “**Company**”).

WHEREAS:

- (A) The Company is for the time being the sole employer in relation to the Bahamas Telecommunications Corporation Retirement Plan for Full-Time Employees (the “**Pension Plan**”).
- (B) Under Section XVIII of the rules of the Pension Plan currently in force, the right (without the consent of any of its members) at any time, to amend or modify the Plan, is reserved to the Company.
- (C) Pursuant to wider arrangements presently in the course of implementation concerning the retirement provision to be made for its staff, the Company wishes to close the Pension Plan to new entrants (save for current full-time employees in a ‘waiting period’ to join) with immediate effect.

IT IS AGREED as follows:

1 OPERATIVE PROVISIONS

In accordance with its powers under Section XVIII of the rules of the Pension Plan and all and any other powers so enabling, the Company hereby alters and modifies the provisions of Section II of the Plan as follows:

- 1.1 By the insertion of the words “*and before [closure date]*” after the words “effective date” and before the words “will be included” on the second line of Paragraph C thereof so that Paragraph C reads as follows:

“C. Each employee who is not eligible to join the Plan on the effective date and new employees hired after the effective date and before [closure date] will be included in the Plan on the first day of June in the year coincident with or next following the date when he qualifies by having:-

- (i) attained 23 years of age and;*
- (ii) one year’s service, but;*
- (iii) not attained 55 years of age.*

Membership in the plan is automatic for all such aforementioned eligible employees and will continue until termination of service.”

- 1.2 By the deletion of the existing Paragraph D and the insertion of a new Paragraph D which reads as follows:

“D. The Plan is closed to new employees hired on or after [closure date].”

2 **GOVERNING LAW AND JURISDICTION**

This Deed shall be governed by and construed in accordance with the laws of The Bahamas. In relation to any legal action or proceedings arising out of or in connection with this Deed whether contractual or non-contractual, the Company irrevocably submits to the exclusive jurisdiction of the courts of The Bahamas and waives any objection to proceedings in such courts on the grounds of venue or on the grounds that proceedings have been brought in an inappropriate forum.

IN WITNESS whereof this Deed has been duly entered into on the date first above written.

IN WITNESS WHEREOF the Common Seal of **The Bahamas Telecommunications Company Limited** was affixed hereto on the day of 2011.

[Chairman / Deputy Chairman]

The Common Seal of **The Bahamas Telecommunications Company Limited** was affixed hereto by _____, the [Chairman / Deputy Chairman] and the said subscribed his signature in the presence of:-

[Secretary / Assistant Secretary / Treasurer]

SCHEDULE 5
NOTICE TO PENSION TRUSTEE

Bahamas Telecommunications Corporation Retirement Plan for Full-Time Employees

From: The Bahamas Telecommunications Company Ltd

To: Ansbacher (Bahamas) Ltd

Date: []

Please take note that on and from [] the rules of the Plan were altered such that, save for existing full-time employees who have not yet satisfied the eligibility criteria to join, the Plan has been closed to new entrants forthwith.

A copy of the instrument effecting the change to the Plan's rules is attached.

.....
(Signed)

[]
For and on behalf of The Bahamas Telecommunications Company Ltd

SCHEDULE 6

NEW DC PLAN: SUBSTANTIVE PROVISIONS

The New DC Plan to be established pursuant to clause 16.2 of this Agreement shall include but not be limited to the following key characteristics:

Structure

- trust-based;
- defined contribution in nature;
- entirely separate from the existing DB pension plan;

Eligibility & joining

- full-time and part-time employees may join;
- enrolment to take place automatically (subject to employee right to opt-out of the Plan thereafter);
- enrolment is subject to satisfactory completion by the employee of any probationary period;

Contributions

- 7% of salary employer contributions, whether or not employees contribute; (default position: 3% of salary employee contributions are required unless election made to reduce);
- additional employer 'matching' contributions up to a maximum of 3% of salary;
- for those who take up the offer made to them as part of the DC Conversion Exercise (in accordance with clause 16 of this Agreement) and join the New DC Plan for future service would include 10% employer contributions, whether or not employees contribute (but no further employer 'matching' facility);

Benefit access

- full portability of benefits in and out (only transfers in being subject to trustee consent);
- normal retirement age in accordance with the prevailing employment terms;
- early retirement permitted (subject to terms of union agreement);

Governance

- governance materials including, but not limited to, annual audit report and popular member report, and internal dispute resolution procedure.

SCHEDULE 7
FEEDER TRUST: GOVERNING DOCUMENTATION

DATED _____ 2011

**THE TREASURER OF THE COMMONWEALTH OF THE
BAHAMAS**

and

[REDACTED]
(as original trustee of the intermediate Feeder Trust hereby created)

and

THE BAHAMAS TELECOMMUNICATIONS COMPANY LIMITED

and

ANSBACHER (BAHAMAS) LIMITED
(as trustee of the Bahamas Telecommunications Corporation
Retirement Plan for Full-Time Employees)

DECLARATION OF TRUST

creating an intermediate Feeder Trust in relation to the Bahamas
Telecommunications Corporation Retirement Plan for Full-Time
Employees

BETWEEN

- (2) **THE TREASURER OF THE COMMONWEALTH OF THE BAHAMAS** a Corporation Sole constituted and existing by virtue of the Ministry of Finance Act (Chapter 23, Statute Laws of The Bahamas 2000 Revised Edition) and currently located at Water Tower Place, North Building, East Street, P. O. Box N-7524, Nassau, New Providence, The Bahamas (the "**Government**");
- (3) [] a [company/corporation] [limited by shares] [incorporated under the laws of [] with registered number [] and whose principal place of business is at [] (the "**Original Trustee**");
- (4) **THE BAHAMAS TELECOMMUNICATIONS COMPANY LIMITED** a private company limited by shares incorporated in The Commonwealth of The Bahamas with registered number 48750 and whose administrative office is situated at John F Kennedy Drive, PO Box N-3048, Nassau, The Bahamas (the "**Company**"); and
- (5) **ANSBACHER (BAHAMAS) LIMITED** a private company limited by shares incorporated in The Commonwealth of The Bahamas with registered number [] and whose registered office is situated at [] in the city of Nassau, N.P., The Bahamas, acting in its capacity as trustee of the Pension Plan hereinafter defined (the "**Pension Trustee**").

WHEREAS

- (D) The Company is the employer in relation to the Bahamas Telecommunications Corporation Retirement Plan for Full-Time Employees (the "**Pension Plan**") and the Pension Trustee is its present trustee.
- (E) The Pension Plan is constituted by an undated set of rules by which it was established with effect from 1 June 1966 (the "**Pension Rules**") and the trust deed made on 31 December 2002 between the Company and the Pension Trustee confirming such establishment and to which those rules are now scheduled (the "**Pensions Deed**"), each as from time to time in force.
- (F) By virtue of a share purchase agreement dated [] the Government has sold 51% of the issued share capital in the Company to an external investor, CWC Bahamas Holdings Limited (the "**Investor**"). The rights and obligations of such parties *inter se* as shareholders in the Company are regulated by a shareholders' agreement dated [] (the "**Shareholders' Agreement**") to which they are similarly party.
- (G) Pursuant to the Shareholders' Agreement the Government, the Investor and the Company have agreed a mechanism whereby the Company's exposure to the Pension Plan is limited to and fixed at 10% of the pensionable earnings of the Pension Plan's active members from time to time (plus expenses and certain redundancy costs), with the residue of such pension costs being met by the Government through the Feeder Trust.
- (H) Those parties have further agreed that the Government will provide security for its obligations to pay such sums to or for the benefit of the Pension Plan, by the creation of the trusts declared herein and the payment of the sum of B\$39,000,000 (thirty-nine million Bahamian dollars) and possible future sums to the Intermediate Trustee to hold subject and in accordance with this declaration of trust.
- (I) The parties now wish to declare the terms of the trusts applicable to such sums of money, it being intended that the trusts established by this Deed shall be known as the "BTC Feeder Trust" (hereinafter referred to simply as the "**Feeder Trust**"), and in furtherance whereof the Government has paid the initial sum of B\$100 (one hundred Bahamian dollars) to the Original Trustee to hold upon the trusts of the Feeder Trust once the same have been declared.

IT IS AGREED as follows

3 DEFINITIONS AND INTERPRETATION

3.1 Definitions

In this Deed unless the context otherwise requires:

“Company Contribution”

means any amount which the Company is required to remit (or procure the remittance of) to the Pension Trustee under clause 16.3.5(a), (b), (d) or (e) of the Shareholders' Agreement (which for the avoidance of doubt are: (i) monthly contributions of 10% of the pensionable salaries of the active members of the Pension Plan; (ii) Plan Expenses Payments; (iii) Headcount Reduction Cost and (iv) any additional amounts due under clause 16.6.2 of the Shareholders Agreement);

“Contribution Year”

means a period beginning on 1 June in any calendar year and ending on 31 May in the next following calendar year;

“Deed”

means the agreement comprised in this Deed;

“Discontinuance Basis”

means the basis that:

- (d) membership of the Pension Plan shall be treated as having terminated on, and Plan Earnings shall be calculated by reference to, the effective date of the Pension Valuation or, in the case of the Termination Lump Sum, as at the effective date of such calculation;
- (e) the vesting schedule set out in Section VIII of the Pension Rules is applicable in full; and
- (f) the Company's consent for the purposes of Paragraph B of Section IV of the Pension Rules shall be treated as not having been given, save in respect of any member of the Pension Plan who at the effective date of the Pension Valuation (or, in the case of the Termination Lump Sum, as at the effective date of such calculation) would were he to have left service as and from that date – have had the right under the Industrial Agreements to an immediate unreduced pension;

“Exit Contribution”

means such amount (if any) as the Government and the Company may agree is payable by the Government as a pre-requisite to a proposed termination of the Government's obligations under clause 16.3.4 of the Shareholders' Agreement (which termination, for the avoidance of doubt, may take place only with the consent of the Company);

“Final Payment”

means the amount then standing to the credit of the Feeder Trust (unless the Government's Exit Contribution was zero, in which case it means such amount as is notified to the Intermediate Trustee by the Company with a copy to the Government as the Final Payment for the purposes of the Feeder Trust), and being in either such case the final payment from the Intermediate Trustee to the Pension Trustee pursuant to this Deed;

“Governance Committee”

means the committee formed of three persons, drawn from Government Directors (for the purposes of the Shareholders' Agreement) and representatives of the Government, as the

Government shall from time to time appoint and whose constitution, and the roles of whose constituent members, shall be such as the Government may from time to time determine;

“Headcount Reduction Cost”

means the net increase in liabilities (if any) of the Pension Plan as the Plan Actuary shall determine (and then notify to the Company, the Pension Trustee and the Intermediate Trustee), on the basis of the assumptions utilised for the most recently-concluded Pension Valuation, of any Headcount Reduction Exercise undertaken by the Company, and in respect of which no prior payment shall have been received by the Pension Trustee from the Company PROVIDED ALWAYS THAT if at the effective date of such Headcount Reduction Exercise no Pension Valuation has been concluded, the assumptions to be used shall be those utilised for the Pension Valuation being undertaken as at the effective date of the Shareholders’ Agreement (whenever concluded);

“Headcount Reduction Exercise”

means an exercise, other than as expressly and specifically provided for in the Voluntary Workforce Restructuring Plan, as defined in the Shareholders’ Agreement, or combination of exercises that collectively bring about, within any rolling twelve-month period, either:

- (a) the Redundancy of fifteen or more of the Company’s employees who are active members of the Pension Plan, whatever the associated Headcount Reduction Cost; or
- (b) Redundancies (of whatever number of the Company’s employees) that result in a Headcount Reduction Cost in excess of B\$1,000,000;

“Incentive Payment”

means any incentive payment due to be made to or in respect of a member of the Pension Plan pursuant to the ‘DC conversion exercise’ more particularly described in the Shareholders’ Agreement;

“Industrial Agreements”

means the industrial agreements in place from time to time between the Company and BCPOU or, as the case may be, BCPMU (and/or such other recognised trade union or unions as with whom from time to time agreements of such a nature may be in place);

“Intermediate Trustee”

means the Original Trustee and its successors in office as the trustee or trustees for the time being of this declaration of trust;

“Investment Manager”

has the meaning given to it by clause 12;

“Investor Group Member”

means:

- (g) the Investor;
- (h) any shareholder in the Investor;
- (i) any direct or indirect parent company of the Investor and any subsidiary of the Investor or any such parent company of the Investor;
- (j) any direct or indirect parent company of any shareholder in the Investor or any subsidiary of such parent company; or
- (k) any partner in any partnership having any interest, direct or indirect, in the Investor;

in each case for the time being;

“Legacy Contribution Payment”

means any amount or contribution payable to or required by the Pension Trustee (whether under the governing documents of the Pension Plan or otherwise including without limitation under any current or future overriding law whether or not (in either case) such payment or requirement is currently in the contemplation of the Parties) from time to time which is not a Company Contribution;

“Parties”

means the Government, the Intermediate Trustee, the Company and the Pension Trustee and their respective successors and permitted assigns (and “Party” shall be construed accordingly);

“Pension Rules”

means the rules governing the operation of the Pension Plan from time to time in force;

“Pension Valuation”

means the initial and subsequent regular formal actuarial assessments of the assets and liabilities of the Pension Plan envisaged by the Shareholders’ Agreement (being referred to therein as the ‘Actuarial Valuation’) to be undertaken with a view to determining and reporting on (1) the actuarial position of the Pension Plan, and (2) the anticipated Company Contributions and Legacy Contribution Payments over the forthcoming period;

“Plan Actuary”

means the actuary to the Pension Plan for the time being appointed, being the ‘Actuary’ for the purpose of the Pension Rules;

“Plan Expenses Payment”

means an amount equal to any administrative charges, fees, taxes, or expense payments (howsoever called but for the avoidance of doubt excluding: (i) any amount required to fund benefit payments to members; and (ii) any fees or taxes associated with the investment management of the Plan’s assets from time to time) as at the relevant date;

- (l) which have been paid by the Pension Trustee from the assets of the Pension Plan; and
- (m) which the Plan Actuary has informed the Company have been so paid; but
- (n) in respect of which the Pension Plan has not yet been reimbursed by the Company;

“Point-of-Sale Deficit”

means such amount as the Plan Actuary shall determine, in accordance with the assumptions detailed in schedule 8 of the Shareholders Agreement, to be the deficit in the Pension Plan (calculated on a Discontinuance Basis) as at the effective date of the Shareholders’ Agreement, provided always that this amount shall be subject to a minimum of zero and a maximum of B\$39,000,000 (thirty nine million Bahamian dollars);

“Redundancy”

means the termination of service of an employee by the Company because of a reduction of the working force resulting from a change or discontinuance of some function of the operations of the Company;

“Tax”

means all forms of tax levy, duty, charge, deposit, contribution, withholding or holding by way of taxation whether chargeable and whether of The Bahamas or elsewhere and any interest, penalties, fines, surcharges, charges or costs relating thereto;

“Tax Authority”

means the Secretary (as defined in the Business Licence Act (Chapter 329, Statute Laws of The Bahamas 2007 (Revised Edition)) and any other governmental, state, federal, principal, local government or municipal authority or body or official whether of The Bahamas or elsewhere in the world competent to impose, administer or collect Tax;

“Termination Day”

means earliest of the following dates:

- (o) the date which is eighty years after the date of the Pensions Deed;
- (p) the day after the payment of the final Legacy Payment Contribution consequent to the termination of the Pension Plan; or
- (q) such other earlier date as the Company after consultation with the Parties and the Investor may by deed appoint;

“Termination Lump Sum”

means such sum as the Government on the advice of the Plan Actuary shall reasonably determine, on the basis of assumptions appropriate as at the effective date of such calculation, and using as its starting point the views of the Plan Actuary, to be the deficit in the Pension Plan (calculated on a Discontinuance Basis) as at the effective date of calculation, net of (1) any Company Contributions due but unpaid and (2) any Company Contributions that would have fallen due for payment during the remainder of the Contribution Year during which the calculation is undertaken;

“The Bahamas”

means The Commonwealth of The Bahamas;

“Trust Expenses Payment”

means an amount equal to any charges, fees, taxes or expense payments (howsoever called but for the avoidance of doubt excluding any amount payable to the trustee of the Pension Plan or otherwise required to fund benefit payments to members of the Pension Plan and subject to a maximum of B\$100,000 in any twelve month period, provided that that B\$100,000 figure will increase on each anniversary of the date hereof in line with the most recently published generally accepted measure of annual retail price inflation in the Bahamas) as at the relevant date:

- (r) which have been paid by the Intermediate Trustee from the assets of the Feeder Trust; and
- (s) which the Intermediate Trustee has informed the Company have been so paid; but
- (t) in respect of which the Feeder Trust has not yet been reimbursed by the Company;

“Trust Fund”

means and includes:

- (u) the aforementioned sum of B\$100 (one hundred Bahamian dollars);
- (v) the aforementioned sum of B\$39,000,000 (thirty nine million Bahamian dollars);

- (w) all or any additions of money, investments or property paid or transferred by or on behalf of the Government to (or so as to be under the control of) the Intermediate Trustee;
- (x) all accumulations of income made by the Intermediate Trustee and added to the capital; and
- (y) the money, investments and property from time to time representing such sums and any such additions and accumulations;

“Trustee Act”

means the Trustee Act, 1998 or any act passed in amendment or substitution therefore; and

“Valuation Contribution”

means, for any month to which that contribution relates, the amount determined by the Plan Actuary, at the most recent Pension Valuation thereof, as the overall monthly contribution due in accordance with the requirements of the Pension Rules (excluding, for the avoidance of doubt, the amortised impact of any Headcount Reduction Cost that has been determined to exist within the Pension Plan).

3.2 Interpretation and Construction

3.2.1 In this Deed, unless otherwise specified or the context otherwise requires:

- (a) words importing the singular only shall include the plural and vice versa;
- (b) words importing the whole shall be treated as including a reference to any part thereof;
- (c) words importing any gender shall include all other genders;
- (d) reference to persons shall include corporations;
- (e) reference to a Schedule, Recital or clause is to the relevant schedule, recital or clause of this Deed;
- (f) reference to this Deed or to any other document is a reference to this Deed or to that other document as modified, amended, varied, supplemented, assigned, novated or replaced from time to time;
- (g) reference to any provision of law is a reference to that provision as modified or re-enacted from time to time, and any past statute or statutory provision which that statute or provision has directly or indirectly replaced, except to the extent that any modification or re-enactment takes effect after the date of this Deed and has the effect of increasing or extending any obligation or liability or otherwise adversely affects the rights of any party to this Deed; and
- (h) reference to any statutory provision is a reference to any subordinate legislation made under that provision from time to time.

3.2.2 Headings used in this Deed shall not affect its construction or interpretation.

3.2.3 Obligations and liabilities assumed by more than one person in this Deed are assumed severally unless otherwise specified.

3.3 Other references

In this Deed a reference to:

- 3.3.1 “**in writing**” or “**written**” includes faxes and any non-transitory form of visible reproduction or words but excludes electronic mail and text messaging via mobile phone;
- 3.3.2 the word “**including**” shall be construed as being by way of illustration or emphasis and not as a word limiting the generality of the preceding words, and the word “**liability**” includes any actual, contingent or prospective liability and/or costs, charges and expenses of whatever nature;
- 3.3.3 “**B\$**” means Bahamian dollars;
- 3.3.4 a “**business day**” means any day which is not a Saturday, a Sunday or a public holiday in The Bahamas;
- 3.3.5 a “**company**” includes any body corporate, wherever incorporated;
- 3.3.6 a “**parent company**” means a company that owns at least 50% of the outstanding voting shares of each class or series of shares in another company;
- 3.3.7 a “**person**” includes any individual, firm, company, corporation, body corporate, government, state or agency of state, trust or foundation, or any association, partnership or unincorporated body of two or more of the foregoing (whether or not having separate legal personality and wherever incorporated or established);
- 3.3.8 a “**subsidiary**” means a company at least 50% of whose outstanding voting shares of each class or series of shares are owned by another company (provided that, for the purposes of this Deed, neither the Company nor any subsidiary of the Company is to be regarded as a subsidiary of the Investor); and
- 3.3.9 any reference to a person being an “**associate**” of another person is to be construed in accordance with the Shareholders’ Agreement.

3.4 **Exercise of powers of control**

Where any obligation in this Deed is expressed to be undertaken or assumed by any Party, that obligation is to be construed as requiring the Party concerned to exercise all rights and powers of control over the affairs of any other person which it is able to exercise (whether directly or indirectly) in order to secure performance of the obligation.

3.5 **Sovereign immunity waiver**

- 3.5.1 If the Government or any of its property or assets is or are entitled in any jurisdiction to any immunity from service of process or of other documents relating to the proceedings under this Deed to which it is a party (“Proceedings”) or to any immunity from jurisdiction, suit, judgment, execution, attachment (whether before judgment, in aid of execution or otherwise) or other legal process, this is irrevocably waived to the fullest extent permitted by the law of that jurisdiction, save and except immunity from execution and attachment as provided at section 19(4) of the Crown Proceedings Act (Chapter 68) Statute Law of The Bahamas, 2000 (the “CPA”). The Government also irrevocably agrees not to claim, save and except as provided in this clause 1.5, any immunity for itself or its property or assets. This waiver and agreement have, and are intended to have, irrevocable effect.
- 3.5.2 Accordingly, the Government consents (subject to clause 19.1.3) generally to the issue of any process in connection with any Proceedings and to the giving of any types of relief or remedy against it save and except as provided in section 14 and section 19(4) of the CPA. Subject to clause 1.5.1, such consent is without prejudice to the right of the Government to defend itself in respect of any such Proceedings.

4 **DECLARATION OF TRUST**

- 4.1 The Intermediate Trustee shall invest or otherwise apply the Trust Fund in such manner as is authorised below.
- 4.2 Out of the capital and income of the Trust Fund the Intermediate Trustee shall, subject to clause 2.3, discharge all proper expenses and liabilities incurred in administering the Feeder Trust.
- 4.3 The Intermediate Trustee shall, on such regular basis as it and the Company may agree (but in any event no less frequently than quarterly), notify the Company of and seek its prompt reimbursement for any and all proper expenses and liabilities incurred in administering the Feeder Trust.
- 4.4 Subject to the requirements of clauses 2.2 and 2.3 the Intermediate Trustee shall hold the capital and income of the Trust Fund (including expenses reimbursed to it by the Company pursuant to clause 2.3) upon the trusts, and with and subject to the powers and provisions, declared and contained in this Deed and hereafter constituting the Feeder Trust.
- 4.5 The Trustee acknowledges that each of the Pension Trustee and the Company is directly interested in and affected by the Trustee's compliance with its obligations hereunder and accordingly acknowledges each of such Party's right to enforce the Trustee's obligations under and in connection with this Deed.

5 **CHARGE TO SECURE REIMBURSEMENT OF PENSION CONTRIBUTIONS ETC**

5.1 **Creation of charge**

Subject as hereinafter provided, the Intermediate Trustee shall hold the capital and income of the Trust Fund (including expenses reimbursed to it by the Company pursuant to clause 2.3) on terms that the same shall, until such time as clause 5.2 provides otherwise, be hereby charged by way of security with the payment (on the behalf of the Company) to the Pension Trustee of such sums as may, from time to time, fall due for payment thereto in accordance with the following provisions of this Deed. The Pension Trustee acknowledges the obligations of the Intermediate Trustee under this Deed and confirms that it will: (a) accept payments from the Intermediate Trustee as a pro tanto discharge of any payment obligations which would otherwise rest with the Company; and (b) to such extent take no action against the Company to recover any Legacy Contribution Payment.

5.2 **Payment of pension contributions and incentive payments**

5.2.1 As soon as practicable after having received:

- (a) the sum of B\$39,000,000 (thirty nine million Bahamian dollars) from the Government, as required by the Shareholders' Agreement;
- (b) notification from the Plan Actuary of the amount of the Point-of-Sale Deficit (again as required by the Shareholders' Agreement); and
- (c) instructions from the Company to remit a sum equal to the Point-of-Sale Deficit to the Pension Trustee;

the Intermediate Trustee shall promptly (i) acknowledge receipt of each of the same in writing to the relevant payee and (ii) raise out of the capital or the income of the Trust Fund and pay to the Pension Trustee a sum equal to the Point-of-Sale Deficit, whereupon the charge over the Trust Fund shall cease to that extent to have effect.

5.2.2 As soon as practicable after having received confirmation from the Company that a Legacy Contribution Payment is due (and in any event on or before the date on which the payment would otherwise have fallen due from the Company (or two weeks after the Company has informed the Feeder Trustee of the Legacy

Contribution Payment if later)), the Intermediate Trustee shall raise out of the capital or the income of the Trust Fund and pay to the Pension Trustee (in satisfaction of the Company's liability therefor) a sum equal to the Legacy Contribution Payment, whereupon the charge over the Trust Fund shall cease to that extent to have effect PROVIDED THAT:

- (a) the obligation of the Intermediate Trustee to pay the Legacy Contribution Payment referred to above shall not apply unless the Company provides the Intermediate Trustee with confirmation from the Pension Trustee the most recently owing (as at the time the Legacy Contribution Payment is being made) Company Contribution and Trust Expenses Payment have been paid; and
- (b) for the avoidance of doubt, the Company may give a confirmation under this clause 3.2.2 before as well as after a Legacy Contribution Payment has become due, but if the Intermediate Trustee receives from the Company confirmation that a series of Legacy Contribution Payments are or will become due over a forthcoming period, then the Company obligation under (a) will apply before each such periodic payment is made by the Intermediate Trustee.

5.2.3 As soon as practicable after having received:

- (a) notification from the Company at any time of the amount of an Incentive Payment, along with details of the member of the Pension Plan to or in respect of whom it is to be applied; and
- (b) instructions from the Company to remit a sum equal to the Incentive Payment to or in respect of the relevant member of the Pension Plan,

the Intermediate Trustee shall promptly:

- (i) acknowledge receipt of each of the same in writing to the relevant payee; and
- (ii) raise out of the capital or the income of the Trust Fund and pay as directed by the Company a sum equal to the Incentive Payment, whereupon the charge over the Trust Fund shall cease to that extent to have effect.

5.2.4 The Intermediate Trustee shall be under no obligation to make any payment in the absence of the confirmations and notifications referred to in sub-clauses 3.2.2 and 3.2.3 and shall not be liable for any loss or liability that may result from its failure by reason of such absence to make any such payment.

5.3 **Government's obligation where payment would otherwise reduce the Trust Fund below B\$2,500,000**

If at any time a payment made or to be made by the Trustee pursuant to the terms of this Deed (in any case, a "**Relevant Feeder Trust Payment**") would reduce the amount standing to the credit of the Feeder Trust below B\$2,500,000 (two-and-a-half million Bahamian dollars), the Intermediate Trustee shall notify the Company, the Government, the Governance Committee and the Plan Actuary forthwith, and the Government hereby covenants in favour of each of the other Parties that it will pay to the Intermediate Trustee within 45 days of such notice such sum as the Plan Actuary certifies is required in order that after the Intermediate Trustee has made that Relevant Feeder Trust Payment the amount standing to the credit of the Feeder Trust would still be at least B\$2,500,000 (two-and-a-half million Bahamian dollars).

5.4 **Reporting obligations**

The Company will procure that, at the same time as the Plan Actuary provides copies of each Pension Valuation to the Company, to the Intermediate Trustee and to the Government pursuant to clause 16.4.3 in the Shareholders' Agreement, the Plan Actuary will also provide

the Governance Committee and the Intermediate Trustee with an additional report detailing, as at the previous calendar year-end:

- 5.4.1 the amount standing to the credit of the Feeder Trust;
- 5.4.2 the aggregate of the Legacy Contribution Payments anticipated in respect of the twelve-month period comprising the next-following Contribution Year
- 5.4.3 the number of years' worth of anticipated Legacy Contribution Payments that could (subject to clause 5.3) be made from the Feeder Trust; and
- 5.4.4 should it be the case that the number obtained pursuant to clause 3.4.3 is three years or less, an estimate of the payment that will initially be required of the Government when the threshold set out in clause 5.3 is reached.

The Intermediate Trustee will promptly upon request provide the Plan Actuary with all such information regarding the assets of the Feeder Trust as the Plan Actuary may require for the purposes of this report.

6 TRUST TO ACCUMULATE SURPLUS INCOME

Subject as hereinafter provided, until the Termination Day the Intermediate Trustee shall hold the Trust Fund on trust to sell, call in and convert the same into money with power to postpone such sale, calling in and conversion for so long as the Intermediate Trustee shall think fit, and subject thereto shall accumulate any surplus income by investing or applying the same and any resulting income in any manner authorised in this Deed and shall hold such accumulations as an accretion to the capital of the Trust Fund and as one fund with such capital for all purposes.

7 WINDING-UP OF THE FEEDER TRUST

- 7.1 Subject as hereinafter provided, from and after the Termination Day the Intermediate Trustee shall pay over to the Pension Trustee out of the capital or the income of the Trust Fund such sum (if any) as is equal to the Final Payment. If upon the making of such payment to the Pension Trustee no monies remain in the Feeder Trust, then it shall terminate.
- 7.2 Subject thereto, the Intermediate Trustee shall hold the balance of the capital and income of the Trust Fund for the Government absolutely. Upon the payment-over of such balance to the Government, the Feeder Trust shall terminate.

8 ULTIMATE DEFAULT TRUST

Subject to the foregoing trusts, powers and provisions of this Deed, the Intermediate Trustee shall hold any part of the capital and the intermediate income of the Trust Fund that is not effectively disposed of by this Deed in trust as to both income and capital for the Government absolutely. Upon the payment-over of such capital and income in full to the Government, the Feeder Trust shall terminate.

9 FURTHER RIGHTS AND OBLIGATIONS

- 9.1 At the written request of the Intermediate Trustee, each of the Company and the Pension Trustee will separately supply to the Intermediate Trustee all information and documents (insofar as the same are in or under its or their possession or control) that the Intermediate Trustee may reasonably require to perform the trusts of this Deed, including any necessary calculations of the Point-of-Sale Deficit, any Legacy Contribution Payment, any Incentive Payment and the Final Payment.
- 9.2 Each of the Company and the Pension Trustee shall give such instructions and supply such information to the Plan Actuary as may be necessary for him to supply any information or material required under the terms of this Deed.

- 9.3 The Intermediate Trustee shall likewise supply to the Plan Actuary any such information as may be necessary for him to supply such information or material.
- 9.4 The Company shall promptly inform the Government, the Intermediate Trustee and the Investor of any change in the identity of the Pension Trustee or the Plan Actuary.
- 9.5 It is agreed and declared that under this Deed the Intermediate Trustee owes no duty to the Investor or any individual beneficiaries of the Pension Plan. It is further agreed, declared and understood that the Intermediate Trustee shall comply with and is bound by all of the provisions of this deed and as such has a responsibility to all of the Parties hereto.
- 9.6 For the avoidance of doubt no person who is not a party to this Deed has any rights to enforce or enjoy the benefits of any provision of this Deed, save to the extent that clauses 17 (announcements) and 18 (confidentiality) confer an express benefit on any Investor Group Member.

10 APPOINTMENT AND DISCHARGE OF TRUSTEES

- 10.1 The power of appointing new or additional trustees hereof up to any number subject to such limit (if any) as may for the time being be imposed by law shall be exercisable by deed by the Government provided that any trustee must satisfy the independence requirement in clause 8.12.
- 10.2 Any trustee hereof may at any time resign its trusteeship on giving not less than 90 days notice addressed to the other trustees (if any) or if there are no other trustees to the Government and the Company and within 90 days after such notice of such resignation the Government shall appoint a successor trustee hereof as per the terms of clauses 10.1 and 10.11.
- 10.3 The office of a trustee hereof shall as a matter of fact be automatically determined and vacated if such trustee being an individual shall be found to be a lunatic or of unsound mind or shall become subject to the bankruptcy laws of the jurisdiction in which he is resident or if such trustee being a company shall enter into liquidation whether compulsory or voluntary (not being merely a voluntary liquidation for the purposes of amalgamation or reconstruction) or if such trustee (whether an individual or a company) should cease to satisfy the independence requirement in clause 8.12.
- 10.4 Forthwith upon any such trustee ceasing to be a trustee hereof pursuant to clause 10.3 any such trustee shall be divested of title to the Trust Fund which shall automatically vest in the continuing trustee or trustees hereof or if there shall be no continuing trustee or trustees then in such trustee incorporated and doing business (or resident if a natural person) within The Bahamas as satisfies the independence requirement in clause 8.12 and whom the Government shall appoint as if the continuing trustee or trustees and/or such newly-appointed trustee had been the original trustee or trustees hereof.
- 10.5 Notices of all changes in the trusteeship shall be endorsed on or attached to these presents signed by the surviving or continuing trustees hereof and the Government and every such notice shall be sufficient evidence to any person having dealings with this Deed as to the facts to which it relates.
- 10.6 Any persons dealing with this Deed may rely upon a copy of these presents and of the notices endorsed thereon or attached thereto certified by any of the trustees hereof before a notary public to the same extent as he might rely on the original.
- 10.7 Any person who satisfies the independence requirement in clause 8.12 may be appointed as a trustee hereof under any of the foregoing powers though not domiciled or resident in The Bahamas.
- 10.8 Every outgoing trustee hereof shall subject to clause 10.10 execute and do all such transfers or other acts or things as may be necessary for vesting the Trust Fund in the new or continuing trustees and the new or continuing trustees shall sign a memorandum as to the trusteeship in accordance with the provisions in that behalf hereinbefore contained.

- 10.9 A retiring or removed trustee shall be entitled to require from each continuing trustee or new trustee hereof indemnity in form elsewhere described herein.
- 10.10 Any trustee shall have the right on retirement or removal or upon its otherwise ceasing to be a trustee hereof or upon distribution or withdrawal of assets forming part or all of the Trust Fund unless otherwise indemnified to its satisfaction to withhold such assets as it shall in good faith consider necessary on account of liabilities whether vested or contingent or otherwise to which it may as trustee be subject or otherwise to satisfy its rights of indemnity hereby or by law granted.
- 10.11 PROVIDED ALWAYS and it is hereby declared that the Government may at any time or times by deed remove any trustee for the time being hereof and may by deed appoint any other person or persons who satisfies the independence requirement in clause 8.12 to be a trustee or trustees in the place of such first mentioned trustee who will subject to clause 10.10 thereupon do and perform such acts or things as may be required to transfer the Trust Fund into the name or names or under the legal control of the continuing trustees or of the trustees so appointed and any appointment of new trustees under the provisions of this clause 8.11 after the removal of the existing trustees shall prevail and override any purported appointment made under any other provision of this Deed.
- 10.12 The independence requirement in this clause 8.12 is, in respect of an individual, that he is independent of the Government, and in respect of a corporation that it and each of its shareholders, officers and directors are independent of the Government. For these purposes a person is independent of the Government if such person is not subject to the direct influence or control of the Government or if the Government has no ability to influence or control the decision making process of such person.

11 REMUNERATION OF TRUSTEES

11.1 Expenses, fees and charges

- 11.1.1 Any corporate trustee hereof shall be entitled to reimbursement out of the Trust Fund of its proper expenses. In the absence of any agreement between the Intermediate Trustee and the Government any such corporate trustee shall be remunerated in accordance with its published terms and conditions for trust business in force from time to time.
- 11.1.2 Any non-corporate trustee hereof being a person engaged in any profession or business shall be entitled to reimbursement out of the Trust Fund of his proper expenses. In addition, any such non-corporate trustee shall be entitled to charge to and be paid out of the Trust Fund all usual professional charges for business done and time spent and services rendered by him or his partners or associates in the execution of the trusts, powers and provisions of this Deed whether in the ordinary course of his profession or business or not.
- 11.1.3 The Intermediate Trustee shall be entitled to retain any commission which would or may become payable to him notwithstanding that such commission is payable as a direct or indirect result of any dealing with property which is or may become subject to the trusts hereof.
- 11.1.4 Any trustee hereof and/or any parent, subsidiary or affiliate of any corporate trustee hereof who carries on the business of banking may act as banker for or in connection with the affairs of this Deed on the same terms as those made with an ordinary customer without being liable to account for any profits earned thereby except for interest payable on any sums forming part of the Trust Fund placed with such trustee or parent, subsidiary or affiliate of such trustee on an interest-bearing account.
- 11.1.5 Any trustee hereof being a lawyer chartered or certified public accountant stockbroker underwriter or other person engaged in any profession or business shall be entitled to charge to and be paid out of the Trust Fund all usual professional and other charges for business transacted time spent and acts done

by him or any partner of his in connection with the trusts hereof including acts which any of the trustees hereof not being in any profession or business could have done personally.

11.2 **Payment out of the Trust Fund**

The expenses in connection with the administration of this Deed, including the remuneration and charges of the trustees hereinbefore provided for, shall be charged to and paid out of the Trust Fund, and expenses arising from the investment and reinvestment of any part of the Trust Fund and the collection of income and other sums derivable therefrom shall similarly be charged to and paid out of the Trust Fund.

12 **TRUSTEES' ADMINISTRATIVE POWERS**

- 12.1 The Intermediate Trustee shall have and may exercise in its absolute discretion from time to time the following powers, without derogating from all the powers invested in any trustee hereof by law, equity or statute and without the interposition of any beneficiary under this Deed.
- 12.1.1 To retain any property belonging to or forming part of the Trust Fund in the actual state or condition in which the same shall be received by the Intermediate Trustee for so long as the Intermediate Trustee shall think proper without being answerable for any loss occasioned thereby.
 - 12.1.2 To sell alienate or otherwise dispose of all or any property at any time forming part of the Trust Fund in such manner by public or private agreement and for such price in money or other consideration and on such terms and conditions as the Intermediate Trustee may think proper and to receive the consideration price and grant discharges therefore.
 - 12.1.3 To exercise all the voting powers attaching to any shares stock debentures or other securities (hereinafter called "**securities**") at any time forming part of the Trust Fund.
 - 12.1.4 To exchange property for other property of a like or different nature and for such consideration and on such terms and conditions as the Intermediate Trustee may consider advisable.
 - 12.1.5 To compromise and settle for such consideration and upon such terms and conditions as the Intermediate Trustee may consider advisable, all matters arising in relation to the trusts hereby created or the Trust Fund and all such compromises and settlements shall be binding on all the beneficiaries under this Deed.
 - 12.1.6 To surrender and deliver up any securities forming part of the Trust Fund for such consideration and upon such terms and conditions as the Intermediate Trustee may approve to any company or corporation reducing its capital, and the Intermediate Trustee may receive such consideration in the form of cash, securities or other assets as may be agreed between the Intermediate Trustee and such other company or corporation.
 - 12.1.7 To abandon or dispose of for no consideration any property which the Intermediate Trustee upon taking appropriate advice considers in its absolute discretion is likely to create an obligation on any beneficiary under this Deed or the Trust Fund or which in the opinion of the Intermediate Trustee would create a charge on the Trust Fund in excess of its market value.
 - 12.1.8 To consent to any reorganisation reconstruction or liquidation of any company or corporation the securities of which form part of the Trust Fund and to consent to any reduction of capital or other dealing with such securities as the Intermediate Trustee may consider advantageous or desirable.

- 12.1.9 To invest or lay out any monies forming part of the Trust Fund or the proceeds of sale without regard to the provisions of the Trustee Act, in the purchase of or at interest upon the security of:
- (a) debt and securities issued by the Bahamian government;
 - (b) debt and securities guaranteed by the Bahamian government;
 - (c) bank deposits, including time deposits; and/or
 - (d) prime bank senior notes or bonds or other forms of senior debt instrument with a term of not more than ten years to maturity;
- and/or such other stocks funds shares securities or commodities (whether present or future interests and whether individually or through the purchase of future interests in a group of stocks) or other investments or property movable or immovable of whatsoever nature and situated anywhere in the world and whether involving liability or not and whether in possession or reversion and whether in the name of the Intermediate Trustee or in the names of nominees or in any other manner giving the Intermediate Trustee control of the same or by way of loan upon such personal credit with or without security as the Government may at its absolute discretion approve.
- 12.1.10 To pay out of the income or capital of the Trust Fund all the costs of and incidental to the preparation, execution and stamping of this Deed.
- 12.1.11 Subject to any applicable law, to determine whether any sums received or disbursed are on account of capital or income or partly on account of one and partly on account of the other and in what proportions, and the decision of the Intermediate Trustee whether made in writing or implied from the act of the Intermediate Trustee shall be conclusive and binding on all the beneficiaries under this Deed.
- 12.1.12 To employ and pay for such professional or other assistance, whether attorneys, accountants, investment advisers, investment managers or otherwise, as the Intermediate Trustee may deem requisite in the discharge of the duties of the Intermediate Trustee.
- 12.1.13 To determine all questions and matters of doubt which may arise in the course of the management, administration, realisation, liquidation, partition or winding up of the Trust Fund.
- 12.1.14 At the expense of the Trust Fund to institute, prosecute and defend proceedings at law affecting the Intermediate Trustee or the Trust Fund or any part thereof and to proceed to the final end and determination thereof or compromise the same as the Intermediate Trustee shall consider advisable.
- 12.1.15 To exercise or concur in exercising the voting and other rights attaching to any securities for the time being forming part of the Trust Fund so as to become a director or other officer or employee (hereinafter called "**services**") of any company and to be entitled to vote for and to be paid and to retain for the use and benefit of the Trust Fund reasonable remuneration for such services.
- 12.1.16 To deposit the securities, title deeds and other documents belonging or relating to the Trust Fund for safe custody with any bank, trust company or like institution in any part of the world.
- 12.1.17 To hold any part of the Trust Fund in the name or names of any nominee or nominees of the Intermediate Trustee.
- 12.1.18 To pay any tax, duty or other fiscal liability whatsoever which is or may be claimed in any part of the world from any person who is or has been or may become

beneficially interested in income or capital of the Trust Fund (including a person interested as the object of a discretion or power) in respect of or by reference to such interest or from the estate of any deceased person who has been interested as aforesaid notwithstanding that such claim may not be enforceable by action in The Bahamas or any jurisdiction in which the Intermediate Trustee is incorporated or carries on business or in which any assets then comprised in the Trust Fund are situated and notwithstanding that such payment may not be to the immediate financial advantage of the beneficiaries or any of them PROVIDED HOWEVER that the Intermediate Trustee's obligation to make any such payments shall be limited to the funds held by the Intermediate Trustee which comprise the interest of such beneficiary under this Deed.

- 12.1.19 To give and satisfy an indemnity to any person or corporation who has previously been a trustee hereof or is about to retire as a trustee hereof against any tax, duty or fiscal liability whatsoever which may be claimed against him in any part of the world by reason of such person or corporation having been such a trustee.
- 12.1.20 To employ and pay at the expense of the income or capital of the Trust Fund any agents in any part of the world whether attorneys, solicitors, bankers, accountants, stockbrokers, trust companies or other agents and whether or not being a trustee hereof, to transact any business or do any act required to be transacted or done in the execution of the trusts hereof (including the receipt and payment of money and execution of documents, the keeping of books or account of income and expenditure of the Trust Fund and the preparation from time to time of the accounts of the Intermediate Trustee).
- 12.1.21 The Intermediate Trustee may, notwithstanding any rule of law or equity to the contrary, delegate to any corporate trustee hereof by revocable power of attorney or otherwise the execution or exercise of all or any trust powers and discretions vested in him as Intermediate Trustee whether individually or jointly with another trustee hereof.
- 12.1.22 To allow the Trust Fund or any part of the Trust Fund to remain in the possession and control of any single trustee hereof PROVIDED THAT such trustee with sole possession and control must be a corporate trustee.
- 12.1.23 To appropriate any part of the Trust Fund in the actual condition or state of investment thereof at the time of appropriation in or towards satisfaction of the share of any person in the Trust Fund as to the Intermediate Trustee may seem just and reasonable according to the respective rights of the persons interested in the Trust Fund.
- 12.1.24 The Intermediate Trustee may allow all or any part of the Trust Fund which consists of cash to remain uninvested so long as it thinks fit and at any time or times at its discretion the Intermediate Trustee may invest any cash held by it or upon any investments authorised by this Deed without the need for diversification and without responsibility for any loss occasioned thereby but with power at its discretion to vary or transpose such investments for or into other investments so authorised.
- 12.1.25 The Intermediate Trustee may transact any business with any person including any affiliate or subsidiary authorised by law upon the same terms as would for the time being be made with an ordinary customer.
- 12.1.26 Without prejudice to any of the foregoing provisions of this clause 10.1, it is hereby declared that the Intermediate Trustee in exercising any of its powers of investment hereunder shall not be bound to have regard to the criteria set out in sub-sections (1)(b) and (1)(c), (2)(a) through (2)(i) inclusive and (5) of section 5 of the Trustee Act, which said provisions of the Trustee Act shall not be applicable hereto.
- 12.1.27 To do all such things and to sign seal and deliver all such deeds and documents and things as may be requisite in the premises or may be necessary or incidental

to the due administration and control of the Trust Fund or the due execution of the trusts hereby created.

- 12.2 Notwithstanding any of the trust powers and provisions herein contained, the Intermediate Trustee shall not have the power at any time until the final distribution of the Trust Fund, by deed, revocable or irrevocable, to release any power, right or discretion vested in the Intermediate Trustee under this Deed or any trust hereby created.

13 TRUSTEE PROTECTION

13.1 Acts and discretions of the Intermediate Trustee

- 13.1.1 Every discretion or power hereby or by law conferred on the Intermediate Trustee shall be an absolute and uncontrolled discretion or power and no trustee hereof shall be held liable for any loss or damage accruing as a result of the Intermediate Trustee concurring or refusing or failing to concur in an exercise of any such discretion or power.
- 13.1.2 No trustee hereof acting in good faith shall be liable for any error of judgment or mistake of law or other mistake or for any damage which may happen to the Trust Fund or any part thereof or the income thereof save actual fraud, wilful default or wilful breach of the trusts hereof by such trustee and the Intermediate Trustee shall be indemnified and held harmless out of the Trust Fund against any claims losses duties taxes and other impositions arising in connection with the Trust Fund or any part thereof.
- 13.1.3 For the avoidance of doubt, the immunities, exculpatory provisions and indemnities in favour of trustees set out in paragraphs 11, 12, 13 and 14 of the First Schedule to the Trustee Act shall form an integral part of this Deed and shall extend *mutatis mutandis* to any former trustee hereof.

13.2 Acts of the Company and the Pension Trustee

- 13.2.1 Save as otherwise herein expressly provided to the contrary any act of the Company or the Pension Trustee pursuant to any of the provisions hereof shall be evidenced by a resolution of its Board of Directors certified under its corporate seal to the Intermediate Trustee and countersigned by the Secretary or Assistant Secretary of the Company or (as the case may be) the Pension Trustee and the Intermediate Trustee shall be fully protected in acting in accordance with any such resolution so certified to it.
- 13.2.2 The Company and the Pension Trustee shall furnish the Intermediate Trustee from time to time with certified true copies of all relevant resolutions of their respective Boards of Directors evidencing the appointment and termination of officers of the Company (or as the case may be the Pension Trustee) or successors thereto and with specimen signatures of all such officers and successors.
- 13.2.3 All directions of the Company or as the case may be the Pension Trustee to the Intermediate Trustee hereunder shall be in writing signed by two officers of such company and the Intermediate Trustee shall upon receipt of any such writing and upon acting in accordance therewith be indemnified by the Company or as the case may be the Pension Trustee against all loss or damage resulting from such act.
- 13.2.4 The Intermediate Trustee shall have the right to rely on and be protected in respect of any such resolution or direction as aforesaid, which is genuine on the face of it and shall not be required to make further inquiry into the authenticity of such resolution or direction.
- 13.2.5 In no event shall the Intermediate Trustee be liable for acting upon any direction, resolution, notice, instruction, authorisation or other communication honestly believed to be authentic and the burden of proving dishonesty shall be upon the

person asserting liability. The Intermediate Trustee may in its absolute discretion disregard or rely upon the presumed intent of any direction, resolution, notice, instruction, authorisation or other communication which it considers to be ambiguous, conflicting or insignificant.

14 INVESTMENT MANAGER

- 14.1 The investment manager or managers of the Feeder Trust (the “Investment Manager”) shall be such company or companies as the Intermediate Trustee (with the prior consent of the Government) shall appoint pursuant to such terms and conditions under one or more separate investment management agreements entered into between any such company or companies and the Intermediate Trustee as shall be consistent with the provisions of clause 10.1.9 and as the Government may approve, and each Investment Manager shall manage the Trust Fund or any part thereof pursuant to the terms of that Investment Manager’s respective investment management agreement.
- 14.2 Subject as hereinbefore provided in clause 12.1 the Intermediate Trustee shall from time to time and on such terms and conditions as the Government shall direct whether for a fixed period of time or subject to a fixed period of notice or otherwise and either in relation to the whole of the Trust Fund or to any part or parts thereof appoint an Investment Manager or employ in a like capacity any person or company including without prejudice to the generality of the foregoing the Intermediate Trustee itself and any company being the parent company or a subsidiary company of the Intermediate Trustee or otherwise associated with the Intermediate Trustee and the provisions set out hereafter in this clause 12 shall apply to any such Investment Manager.
- 14.3 Subject as hereinafter provided the Intermediate Trustee shall pay out of the Trust Fund to any such Investment Manager such fees commissions or other remuneration as agreed by the Government and such compensation for expenses as the Intermediate Trustee may in its discretion think fit and any such Investment Manager shall be entitled to retain for its or his own use and benefit any commissions or shares of commissions customarily or by usage payable to such Investment Manager in relation to any dealing or transaction with or concerning the Trust Fund or any part thereof PROVIDED ALWAYS that in the event that the Intermediate Trustee or any parent subsidiary or associated company as aforesaid shall act as Investment Manager it shall be entitled to remuneration and commission and generally to act in accordance with its published terms and conditions for acting as such in force from time to time.
- 14.4 The Intermediate Trustee may, notwithstanding any rule of law or equity to the contrary, delegate to any Investment Manager all or any of the trusts powers and discretions imposed on or vested in the Intermediate Trustee by this Deed or by law for the management investment and reinvestment of all or any part of the assets from time to time comprised in the Trust Fund (as limited by the investment management agreement(s) hereinbefore referred to) and the Intermediate Trustee shall, in the absence of fraud, wilful default or wilful breach of trust on the part of the Intermediate Trustee or in its appointment of such Investment Manager, not incur any liability for any loss which may be incurred as a result of the employment or activities of an Investment Manager PROVIDED THAT should the Intermediate Trustee receive notice of any sustained loss, it shall act expeditiously to avert or mitigate the same.
- 14.5 The Intermediate Trustee shall require monthly reports from any Investment Manager showing the current position of the part of the Trust Fund under the control of such Investment Manager and shall be under no further obligation in respect of its supervision of the Investment Manager in the absence of actual notice of any impropriety on the part of the Investment Manager or any sustained loss to the Trust Fund.
- 14.6 The Intermediate Trustee shall not incur any liability or be in any way responsible for any loss which may be incurred as a result of anything done or not done as a result of advice or recommendation given or purported to have been given by such Investment Manager (whether in writing or by telephone or by other telecommunication) or for any omission to take any action in the absence or non-receipt of such advice or recommendation from such Investment Manager and so that in particular but without prejudice to the generality of the

foregoing the Intermediate Trustee not shall be liable for any failure to diversify the investment of the Trust Fund or any part thereof.

15 MISCELLANEOUS PROVISIONS RELATING TO TRUSTEES

15.1 Trustee decision-making

15.1.1 If there shall be more than one trustee hereof and any one of such trustees shall at any time disagree or differ from the others or other of the trustees as to the exercise of any of the powers and discretions hereby or by law or by any instrument executed hereunder conferred on the Intermediate Trustee or as to the manner of the exercise of any such power or discretion then any such powers and discretions and all other powers and acts incidental thereto shall become exercisable by a majority of the trustees for the time being hereof not being less than two in number wishing to exercise such power or discretion PROVIDED THAT no trustee hereof shall be liable in any way for any claims or losses arising in connection with the Trust Fund resulting from any actions taken by the Intermediate Trustee consequent upon a decision of a majority of the trustees hereof either expressly against the wishes or without the knowledge of any such other trustee.

15.1.2 Any trustee hereof who is a corporation may exercise or concur in exercising any discretion or power hereby or by law conferred on the Intermediate Trustee by resolution of such corporation or its board of directors or governing body or may delegate the right and power to exercise or concur in exercising any such discretion or power to any one or more of its directors or officers or employees or to such other person or persons as such trustee shall think proper.

15.1.3 If at any time there shall be one trustee only hereof whether an individual or a company or a trust corporation such trustee shall be entitled and empowered to exercise alone all such powers and discretions conferred by this Deed or by law would but for this provision be exercisable only by two or more trustees.

15.2 No duty to act

The Intermediate Trustee shall not be bound or required to interfere in the management or conduct of the business of any company in which the Intermediate Trustee hereof shall be interested although holding the whole or a majority of the shares carrying the control of the company so long as there shall be no actual notice of any act of dishonesty or misappropriation of monies on the part of the directors having conduct of the business (including the payment or non-payment of dividends) and no beneficiary under this Deed shall be entitled to require the distribution of any dividend by any company in which the Intermediate Trustee has an interest or require the Intermediate Trustee to exercise any powers it may have of compelling any such distribution.

15.3 Books and records

The Intermediate Trustee shall establish and maintain proper and accurate books of account and records in respect of the Trust Fund and the income thereof and shall at least once in each calendar year prepare financial statements showing the assets, income and expenditure of the Trust Fund and produce such financial statements for inspection by the Plan Actuary, the Company and/or the Government upon request. Unless otherwise directed in writing by the Company, the Trustee shall annually have such financial statements or any of them audited by a person being a member of the Bahamas Institute of Chartered Accountants. Without prejudice to the foregoing, the Intermediate Trustee shall promptly upon request provide the Company and/or the Government (as the case may be) with such information regarding the assets of the Feeder Trust from time to time as either such Party may reasonably request.

15.4 **Taxes**

Notwithstanding anything herein contained, all taxes of any kind levied or assessed under existing or future laws upon the Trust Fund or any part thereof shall be paid by the Intermediate Trustee out of the Trust Fund.

15.5 **Power to determine**

Subject as aforementioned the Intermediate Trustee shall have power to conclusively determine all questions and matters of doubt arising in connection with the Feeder Trust insofar as the same affect any of the trusts powers or provisions herein contained and the Intermediate Trustee shall have a like power in connection with any question or matter of doubt arising in connection with this Deed in reference to the Feeder Trust or otherwise.

16 **ASSIGNMENT**

16.1 Save as provided in for in clause **25.2**, no Party shall without the prior written consent of the other Parties assign, transfer or otherwise delegate (in whole or in part) or charge or deal in any manner with the benefit of or the rights under this Deed.

16.2 The Government (and any permitted assignee of the Government as provided below) may at any time assign and transfer all or any of its rights and/or obligations under this Deed to any person to whom it has properly (i.e. with the prior written consent of the Investor as required by clause 24.3 (Assignment) of the Shareholders' Agreement) assigned its rights and/or obligations under clause 16 (Pensions) of the Shareholders' Agreement.

16.3 Any permitted assignee under this clause 16 shall be entitled to enforce and be bound by the terms of this Deed with effect from the date of assignment as if it were a Party to this Deed. For the avoidance of doubt, until a person becomes a permitted assignee, it shall not be entitled to enforce any term of this Deed whether as a third party or otherwise.

16.4 The provisions of this Deed shall be binding on and enure for the benefit of the successors and permitted assigns of the Parties.

17 **ANNOUNCEMENTS**

17.1 **Prohibition on announcements**

Subject to clause 17.2, and whether or not any restriction contained in clause 18 applies, no announcement concerning the matters provided for in this Deed shall be made or issued by or on behalf of any of the Parties without the prior written approval of the Company (not to be unreasonably withheld or delayed) and of the Government.

17.2 **Exceptions**

The provisions of clause 17.1 shall not apply to any matters required to be made:

17.2.1 in compliance with any requirement of law or regulation or pursuant to the order of a court of competent jurisdiction; or

17.2.2 in response to a requirement of the regulations of any applicable regulatory authority or regulatory or governmental or fiscal body,

save that the Party required to make such announcement shall, to the extent permitted by law and regulation, give the other Parties and the Investor every reasonable opportunity to comment on any announcement or release before it is made or issued (provided that this shall not have the effect of preventing the Party making the announcement or release from complying with its legal and/or stock exchange obligations).

17.3 **No time limit**

The restriction in clause 17.1 shall apply without limit of time.

18 CONFIDENTIALITY

18.1 Confidentiality obligation

Each Party (each, for the purpose of this clause 18, a “**Recipient**”) shall use all reasonable endeavours to keep confidential (and to ensure that its officers, employees, agents and professional and other advisers keep confidential) any information:

- 18.1.1 which it may have or acquire before or after the date of this Deed in relation to the Company’s customers, business, assets or affairs and/or those of the Pension Plan; or
- 18.1.2 which relates to the contents of this Deed (or any agreement or arrangement entered into pursuant to this Deed), save that the obligation in this clause 18.1.2 does not apply to, or in any way restrict, the Government.

No Recipient shall use for its own business purposes or disclose to any third party any such information (collectively, “**Confidential Information**”) without the consent of the other Parties.

18.2 Exceptions from confidentiality obligation

The obligation of confidentiality under clause 28.1 does not apply:

- 18.2.1 where such information enters the public domain (otherwise than as a result of a breach by any of the parties of their respective obligations in this clause 18);
- 18.2.2 if and to the extent:
 - (a) the disclosure is made (subject to clause 18.3) on a ‘need to know’ basis to a body which is another governmental body (for these purposes any governmental body (corporate or otherwise), department, board, authority or agency of The Bahamas, or any body corporate or partnership controlled by the government of The Bahamas) or to a company which is an Investor Group Member, where in either such case the disclosure is for a purpose reasonably incidental to this Deed and/or the Pension Plan;
 - (b) information has been independently developed by the relevant Recipient or acquired from a third party to the extent that it is acquired with the right to disclose the same;
 - (c) the disclosure is made (subject to clauses 18.3 and 28.4) only to the Recipient’s professional advisers, or similarly to those of an Investor Group Member, in confidence and for a purpose reasonably incidental to this Deed and/or the Pension Plan;
 - (d) disclosure is required for the purpose of any other agreement entered into under or pursuant to this Deed or the Recipient is reasonably required to disclose information concerning this Deed and/or the Pension Plan to a Tax Authority for the purposes of its Tax affairs or those of any Investor Group Member;
 - (e) the information is required to be disclosed by any applicable laws, any stock exchange regulation, any binding judgment, any order or requirement of any court or other competent authority or disclosed in response to a requirement of any other applicable regulatory authority or regulatory, governmental body (including any self-regulatory organisation); or
 - (f) the disclosure is an announcement made in accordance with the terms of clause 17,

provided that any such information used or disclosable pursuant to this clause 18.2.2 shall, so far as reasonably practicable and, to the extent permitted by law and regulation, be used or disclosed only after consultation with the other Parties.

18.3 Employees, agents and advisers

Each Recipient shall inform (and the Company shall use all reasonable endeavours to ensure that any Investor Group Member will inform) any officer, employee or agent or any professional or other adviser advising it in relation to the matters referred to in this Deed, or to whom it provides Confidential Information, that such information is confidential and shall instruct them:

18.3.1 to keep it confidential; and

18.3.2 not to disclose it to any third party (other than those persons to whom it has already been disclosed, or to whom it may be disclosed in accordance with the terms of this Deed).

The disclosing Recipient is responsible for any breach of this clause 18 by the person to whom the Confidential Information is disclosed.

18.4 Return of Confidential Information

When this Deed is no longer of any effect, any Party may by notice require any Recipients to return (or, in the case of any Confidential Information held by an Investor Group Member, it may require the Company to use all reasonable endeavours to ensure the return of) that first Party's Confidential Information. If so, the Recipients (or, in the case of any Confidential Information held by an Investor Group Member, the Company will use all reasonable endeavours to ensure that the Investor Group Member concerned) shall:

18.4.1 return or destroy all documents containing Confidential Information which have been provided by or on behalf of the Party demanding the return of Confidential Information; and

18.4.2 destroy any copies of such documents and any document or other record reproducing, containing or made from or with reference to the Confidential Information;

(save, in each case, for any Confidential Information which is contained in or required for any submission to or filings with governmental, tax or regulatory authorities). The Recipients (or, in the case of any Confidential Information held by an Investor Group Member, the Company will use all reasonable endeavours to ensure that the Investor Group Member concerned) shall return or destroy the Confidential Information as soon as practicable after receiving notice.

18.5 Survival after termination

The provisions of this clause 18 shall apply without limit of time.

19 COSTS

Save as expressly provided in this Deed, all expenses incurred by or on behalf of the Parties, including all fees of professional advisers employed by any of the Parties in connection with the negotiation, preparation and execution of this Deed shall be borne solely by the Party which incurred them.

20 AMENDMENTS AND WAIVERS

20.1 Amendments

No amendment or variation of this Deed or any of the documents referred to in it (other than the Shareholders' Agreement) shall be effective unless it is in writing and signed by or on behalf of each of the Parties. Amendment or variation of the Shareholders' Agreement shall be in accordance with its own terms.

20.2 **Waivers and remedies**

- 20.2.1 The rights and remedies of each Party under this Deed may be waived only in writing and specifically.
- 20.2.2 Delay in the exercise or non-exercise of any right or remedy under this Deed is not a waiver of that right or remedy.
- 20.2.3 Partial exercise of any right or remedy under this Deed shall not preclude any further or other exercise of that right or remedy or any other right or remedy under this Deed.
- 20.2.4 Waiver of a breach shall not operate as a waiver of any subsequent breach.

21 **ENTIRE AGREEMENT**

21.1 The Parties agree that:

- 21.1.1 save to the extent that any of the Parties are also party to the provisions of clause 16 of the Shareholders' Agreement, this Deed constitutes the entire agreement between the Parties with respect to the subject matter of it;
- 21.1.2 none of them have been induced to enter into this Deed in reliance upon, nor have they been given, any warranty, representation, statement, agreement or undertaking of any nature whatsoever other than as are expressly set out in this Deed and, to the extent that any of them have been the relevant Party unconditionally and irrevocably waives any claims, rights or remedies which it might otherwise have had in relation thereto and any right to terminate this Deed for any reason; and
- 21.1.3 the only remedies available to them in respect of this Deed are damages for breach of contract or breach of trust and, for the avoidance of doubt (but subject as expressly stated to the contrary in this Deed), no Party shall have any right to rescind or terminate this Deed either for breach of contract or for negligent or innocent misrepresentation or otherwise;

provided that this clause 21 shall not exclude any liability which any Party would otherwise have to any other Party or any right which any of them may have to rescind this Deed in respect of any statements made fraudulently by any other Party prior to the execution of this Deed or any rights which any of them may have in respect of fraudulent concealment by such other Party.

22 **NOTICES**

22.1 **Writing**

All notices between the Parties with respect to this Deed shall be in writing and signed by the Party giving it.

22.2 **Service**

Any notice referred to in this Deed, shall be served by delivering it:

- 22.2.1 by hand;
- 22.2.2 by sending it by pre-paid post, registered delivery or (in respect of a notice being sent overseas) airmail; or
- 22.2.3 by fax

to the address of the addressee set out below, or to such other address as the addressee may from time to time have notified for the purpose of this clause 22.

22.3 Deemed delivery

A notice shall take effect from the time received or, if earlier, the time of deemed receipt in accordance with this clause 22, unless a later time is specified in it. Notices shall be deemed to have been received:

- 22.3.1 if delivered by hand, at the time of delivery;
- 22.3.2 if sent by pre-paid post or registered delivery two business days after posting exclusive of the day of posting;
- 22.3.3 if delivered by air mail, five business days after posting exclusive of the day of posting; or
- 22.3.4 if sent by fax, at the time of transmission unless received after normal office hours in the place of receipt in which case it shall be deemed to have been received on the next business day in the place of receipt.

22.4 Proof of service

In proving service:

- 22.4.1 of delivery by hand, it shall be necessary only to produce a receipt for the communication signed by or on behalf of the addressee;
- 22.4.2 by post, it shall be necessary only to prove that the communication was contained in an envelope which was duly addressed and posted in accordance with this clause 22; and
- 22.4.3 by fax, it shall be necessary only to produce the sender's transmission slip bearing the addressee's fax number showing the fax received by the addressee.

22.5 Addresses for notices

The addresses and fax numbers of the Parties for the purposes of this clause 22 are:

Government

Address: Cecil Wallace-Whitfield Centre
Cable Beach
PO Box N 3017, Nassau
New Providence, The Bahamas

For the attention of: The Financial Secretary

Fax number: +1 242 327 1618

Intermediate Trustee

Address: []

For the attention of: []

Fax number: []

Company

Address: John F Kennedy Drive, PO Box N-3048, Nassau, Bahamas

For the attention of: The Chief Executive Officer

Fax number: +1 242 326 8423

Pension Trustee

Address: 308 East Bay Street, PO Box N7768, Nassau, Bahamas

For the attention of: Mrs Catherine Fadely

(Account Manager: Bahamas Telecommunications Corporation Retirement Plan)

Fax number: +1 242 326 5020

22.6 No electronic transmission

Any notice given under this Deed shall not be validly served if sent by electronic mail, by text messaging via mobile telephone or other electronic means other than fax.

23 COUNTERPARTS

23.1 Execution in counterparts

This Deed may be executed in any number of counterparts and by the Parties to it on separate counterparts, but shall not be effective until each Party has signed at least one counterpart.

23.2 One agreement

Each counterpart shall constitute an original of this Deed but all counterparts shall together constitute one and the same agreement.

24 INVALIDITY

24.1 If any provision in this Deed is or is held to be illegal, invalid or unenforceable, in whole or in part, the provision shall apply with whatever deletion or modification is necessary so that the provision is legal, valid and enforceable and gives effect to the commercial intention of the Parties.

24.2 To the extent it is not possible to delete or modify the provision, in whole or in part, under clause 34.1, then such provision or part of it shall, to the extent that it is illegal, invalid or unenforceable, be deemed not to form part of this Deed and the legality, validity and enforceability of the remainder of this Deed shall, subject to any deletion or modification made under clause 34.1, not be affected.

25 GOVERNING LAW

This Deed shall be governed by and construed in accordance with the laws of The Bahamas.

26 JURISDICTION

In relation to any legal action or proceedings arising out of or in connection with this Deed, the Parties irrevocably submit to the exclusive jurisdiction of the courts of The Commonwealth of The Bahamas and waive any objection to proceedings in such courts on the grounds of venue or on the grounds that proceedings have been brought in an inappropriate forum.

AS WITNESS this Deed has been signed by the duly authorised representatives of the Parties as a deed on the day and year first before written.

SCHEDULE 8

ACTUARIAL ASSUMPTIONS: POINT OF SALE DEFICIT

1 INTRODUCTION

- 1.1 This note sets out the assumptions agreed by BTC and the Plan Actuary for undertaking the Point of Sale Deficit as at the effective date of execution of the privatisation of BTC ("effective date").
- 1.2 "Point of Sale" has been defined in the Shareholders Agreement as at the effective date as follows:

"Point-of-Sale Deficit"

means such amount as the Plan Actuary shall determine, on the basis of the assumptions set out in Schedule 8 (which shall also be utilised for the Actuarial Valuation to be undertaken as at the Effective Date, to be the deficit in the Pension Plan (calculated on a Discontinuance Basis) as at the Effective Date, provided always that this amount shall be subject to a minimum of zero and a maximum of the Initial Contribution;

Further to receiving advice from General Counsel in the UK, it was agreed to calculate the point of sale deficit on a "discontinuance basis".

"Discontinuance basis" has been defined in the Shareholders Agreement as at the effective date as follows:

"Discontinuance basis"

means the basis that:

- (a) membership of the Pension Plan shall be treated as having terminated on, and Plan Earnings shall be calculated by reference to, the effective date of the Actuarial Valuation or, in the case of the Termination Lump Sum, as at the effective date of such calculation;
- (b) the vesting schedule set out in Section VIII of the Pension Rules is applicable in full; and
- (c) the Company's consent for the purposes of Paragraph B of Section IV of the Pension Rules shall be treated as not having been given, save in respect of any member of the Pension Plan who at the effective date of the Actuarial Valuation (or, in the case of the Termination Lump Sum, as at the effective date of such calculation) would – were he to have left service as and from that date – have had the right under the Industrial Agreements to an immediate unreduced pension;

2 ASSUMPTIONS

- 2.1 The assumptions are based on our understanding of the Plan's benefits, investment market conditions during December 2010, general best practice, along with the views of the Company and the Privatisation Committee.

Following discussions with the Company, we set out below the assumptions that were agreed and supporting rationale. The assumptions may be broadly categorised into those which are financial and those which are demographic, and these are considered separately in the sections below.

2.2 Financial assumptions

2.2.1 Discount rate

In light of the small market in Bahamian corporate bonds, we propose that the discount rate is set with consideration of the yields available on Bahamian Government bonds of appropriate duration.

The discount rate will be based on the yield on the government bond holdings of the Plan as sourced from the portfolio valuations provided by Ansbacher and the Central Bank of the Bahamas. As at 31 December 2010, this gives a discount rate of 6.0% a year, based on the 30 September 2010 portfolio valuations.

Should the Point-of-Sale deficit be calculated with an effective date after 31 March 2011, the 31 December 2010 portfolio valuation will be used to determine the discount rate, with a similar adjustment each three month period.

2.3 Demographic assumptions

2.3.1 Mortality

The mortality assumption should ideally reflect the expected experience for the Bahamas with some allowance for future mortality improvements. The improvement allowance is required to take account of the fact that, in general, people are expected to live longer in future years. Annual life tables produced by the WHO for all member states including the Bahamas indicate that for a 60 year old male life expectancy in the Bahamas is 20.6 years whilst for a female it is 24.1 years.

The RP2000 Tables indicate that for a 60 year old male life expectancy is 21.7 years and for a female life expectancy is 24.4 years. On this basis, in our opinion, the RP2000 Tables are appropriate and contain some scope for future improvements.

2.3.2 Early retirement

In coming up with the below proposal, we have taken consideration of part (c) of the "Discontinuance Basis" definition.

The latest Industrial Agreements which expired on 1 October 2010 state that "all employees who have completed thirty years of pensionable service with vesting rights in the Pension Plan are eligible to apply for full retirement benefits in accordance with the Company's Retirement Plan".

For the purpose of calculating the "Discontinuance Basis", we will therefore assume that all employees over the age of 50, who have completed thirty years of pensionable service, will be granted an immediate unreduced pension.

However, please note that the established practice is to allow all those over age 50 (regardless of the number of years of service) who make a request for early retirement, to be allowed to retire immediately with no reduction, provided they have a minimum vesting of 30% (i.e. five years in the Plan).

2.3.3 Plan expenses

No allowance. Plan Expenses will be met out of the Plan but the Trustees will be reimbursed by the Company, on the advice of the Plan Actuary. Therefore, no expenses will be met from the Feeder Trust.

3 CAVEATS

- 3.1 The basis and assumptions quoted above are as at 31 December 2010 and reflect market conditions as at that date. Should the Point-of-Sale deficit be calculated with an effective date

after 31 March 2011, the methodology and assumptions would need to be updated to reflect conditions at the time, with a similar adjustment each three month period.

- 3.2 This paper has been produced for the Privatisation Committee, to be included within the legal documentation on privatisation of BTC. As such, it should not be used or relied upon by any other person or party for any other purpose.

IN WITNESS WHEREOF The Treasurer of the Commonwealth of The Bahamas hereunto affixed her hand and corporate seal on the _____ day of _____ 2011.

THE CORPORATE SEAL of the said Treasurer was affixed hereto by the said Treasurer and the said Treasurer affixed her signature hereto in the presence of:-

EXECUTED as a **DEED** by)
for and on behalf of **CWC BAHAMAS**)
HOLDINGS LIMITED

[Signature of Party]

Witness Name:

.....

Witness Occupation:

.....

Witness Address:

.....
.....
.....

IN WITNESS WHEREOF The Common Seal of **The Bahamas Telecommunications Company Limited** was affixed hereto on the _____ day of _____ 2011.

[Chairman / Deputy Chairman]

The Common Seal of **The Bahamas Telecommunications Company Limited** was affixed hereto by _____, the [Chairman / Deputy Chairman] and the said _____ subscribed his signature in the presence of:-

[Secretary / Assistant Secretary / Treasurer]

EXECUTED as a **DEED** by)
)
for and on behalf of **CABLE & WIRELESS**)
(WEST INDIES) LIMITED

[Signature of Party]

Witness Name:

Witness Occupation:

Witness Address:
.....
.....