

**Dated**

16

**November 2015**

**CABLE & WIRELESS LIMITED**

**AND**

**NAYA MANAGEMENT LLP**

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**DEED OF INDEMNITY**

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Slaughter and May  
One Bunhill Row  
London EC1Y 8YY  
(ADJ/RQD)

532800584

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THIS DEED is made on the 16 day of November 2015 between Cable & Wireless Limited, a company incorporated in England and Wales (registered number 00238525), whose registered office is at 2<sup>nd</sup> Floor, 62 – 65 Chandos Place, London WC2N 4HG, United Kingdom (the "Company") and Naya Management LLP whose registered office is at 54 Baker Street, London W1U 7BU ("Naya") **IN FAVOUR** of each Indemnified Party (as defined below).

**THIS DEED WITNESSES** as follows:

**1. Interpretation**

1.1 In this Deed:

- "Affiliate"** means (a) in the case of a body corporate, any parent undertaking or subsidiary undertaking of that body corporate and any subsidiary undertaking of any such parent undertaking, in each case from time to time; and (b) in the case of a limited partnership, any nominee or trustee of the limited partnership, the partners in that limited partnership or their nominees, any investment manager or investment adviser to the limited partnership, any parent undertaking or subsidiary undertaking of that investment manager or investment adviser and any other investment fund managed or advised by any such person;
- "Cable & Wireless"** means Cable & Wireless Communications Plc, a company existing under the laws of England under registered number 07130199;
- "Carve-out"** means the proposed carve-out of certain FCC-licensed assets of Cable & Wireless in accordance with the terms of the Carve-out SPA;
- "Carve-out Holdco"** means CWC New Cayman Holdco Limited of Walkers Corporate Limited, Cayman Corporate Centre, 27 Hospital Road, George Town, Grand Cayman KY1-9008, Cayman Islands (a company duly incorporated and existing under the laws of the Cayman Islands with company number 305511);
- "Carve-out Shareholder Arrangements Deed"** means the shareholder arrangements deed dated on or around the date of this Deed entered into between Cable & Wireless Communications, Inc and Naya In relation to the entry into certain shareholder arrangements in connection with the Carve-out;
- "Carve-out SPA"** means the share purchase agreement dated on or around the date of this Deed entered into between Cable & Wireless Communications, Inc and CWC New Cayman

Holdco Limited in respect of the sale of CWC New Cayman Limited;

<b>"Claim"</b>	means any investigation, demand, claim, action or proceeding, brought or threatened, against an Indemnified Party or any other person in any jurisdiction;
<b>"Code"</b>	means the City Code on Takeovers and Mergers as issued from time to time by or on behalf of the Panel;
<b>"Confidential Information"</b>	has the meaning given in clause 12.1;
<b>"FCC"</b>	means the United States Federal Communications Commission;
<b>"Indemnified Party"</b>	means each of Naya and its Affiliates which, at the date hereof, directly or indirectly, hold shares in Carve-out Holdco (collectively, the "Indemnified Parties");
<b>"Indemnity"</b>	has the meaning given in clause 2.1;
<b>"Indemnity Claim"</b>	means any claim brought under the terms of the Indemnity;
<b>"Indemnity Payment"</b>	means a payment under the Indemnity;
<b>"Loss"</b>	means any and all loss, liability, costs, penalties or expenses suffered or incurred by the Indemnified Party on or after the date of this Deed relating to or arising as a result of the Indemnified Party holding shares in Carve-out Holdco and thereby participating in the Carve-out (but, excluding, for the avoidance of doubt, any loss suffered by the Indemnified Party relating to or arising as a result of any variation in the value of its holding of shares in Cable & Wireless at any time);
<b>"Maximum Overall cap"</b>	means the maximum permissible amount payable by the Company without the need to obtain approval of the shareholders of Cable & Wireless pursuant to the provisions of the UK Listing Rules, such amount to be calculated at the date hereof in accordance with Chapter 10 (including Annex 1 of Chapter 10) of the UK Listing Rules, being the maximum overall amount payable by the Company in respect of all Indemnity Claims arising under the terms of this Deed;
<b>"Panel"</b>	means the UK Panel on Takeovers and Mergers;

- “Proceedings”** has the meaning given in clause 14.1;
- “Tax”** includes (without limitation) all taxes, levies, duties, imposts, charges and withholdings of any nature whatsoever, whether of the United Kingdom or elsewhere, together with all penalties, charges and interest relating to any of them or to any failure to file any return required for the purposes of any of them; and
- “Third Party Claim”** has the meaning given to it in clause 3.1.

1.2 In this Deed:

- (A) references to clauses or sub-clauses are to clauses or sub-clauses (as the case may be) of this Deed;
- (B) use of either gender includes the other gender;
- (C) a reference to any statute or statutory provision shall be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or re-enacted;
- (D) a reference to any legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall in respect of any jurisdiction other than England be treated as a reference to any analogous term in that jurisdiction;
- (E) the expressions “**subsidiary undertaking**” and “**parent undertaking**” shall have the meaning given in the Companies Act 2006;
- (F) headings and titles are inserted for convenience only and are to be ignored in the interpretation of this Deed; and
- (G) a reference to any party “**holding shares**” shall include shares held directly or indirectly by such party including, for the avoidance of doubt, shares held by such party’s duly appointed custodian or nominee or a nominee appointed by such party’s custodian (as the case may be) for the benefit of such party.

2. **Indemnity**

2.1 The Company undertakes on and from the date hereof to indemnify and hold harmless each of the Indemnified Parties on an ongoing basis against any Loss subject to the Maximum Overall Cap (the “**Indemnity**”) **PROVIDED THAT**, without prejudice to any other rights or remedies available to each of the Indemnified Parties, the Indemnity shall not extend to any Loss:

- (A) arising as a direct result of:

- (i) any act or omission of the relevant Indemnified Party which constitutes a criminal offence;
- (ii) the wilful default of the relevant Indemnified Party; or
- (iii) a material breach of the terms of the Carve-out Shareholder Arrangements Deed by the relevant Indemnified Party which has not been remedied to the reasonable satisfaction of the Company within fourteen days of receipt of written notice served by the Company on Naya in accordance with clause 7, such notice to set out in reasonable detail the nature of such material breach.

### 3. Advance of Costs

3.1 Without prejudice to the Indemnity but subject always to the Maximum Overall Cap and the provisions of clause 4, the Company shall promptly, upon written notice from an Indemnified Party, advance such funds (an "**Advance**") (and further Advances, if appropriate) to the Indemnified Party as the Indemnified Party, acting reasonably at all times, considers appropriate for the Indemnified Party to meet expenditure incurred or expenditure reasonably likely to be incurred by it or its Affiliates:

- (A) in defending, managing or assessing any actual or threatened criminal or civil proceedings brought against the Indemnified Party by any third party (including, for the avoidance of doubt, the Company, Cable & Wireless and each of their Affiliates) relating to or arising as a result of the Indemnified Party holding shares in Carve-out Holdco and thereby participating in the Carve-out; or
- (B) in defending, managing, assessing or complying with:
  - (i) an investigation by a regulatory authority; or
  - (ii) action proposed to be taken by a regulatory authority,

relating to or arising as a result of the Indemnified Party holding shares in Carve-out Holdco and thereby participating in the Carve-out ("**Third Party Claims**").

3.2 References in this clause to acts and omissions are to acts and omissions respectively carried out, made or omitted to be made on or after the date of this Deed.

### 4. Limitation

4.1 If the Company makes an Indemnity Payment to an Indemnified Party under clause 2.1 or makes an Advance under clause 3.1 and the Indemnified Party subsequently recovers from a third party a sum which is referable to the matter giving rise to the Indemnity Claim or the Advance (as the case may be) the Indemnified Party shall promptly thereafter repay to the Company:

- (A) an amount equal to the sum recovered from the third party less any reasonable out-of-pocket costs and expenses and Tax incurred by the Indemnified Party in recovering the same; or
- (B) if the figure resulting under clause 4.1(A) above is greater than the Indemnity Payment or Advance a sum equal to the Indemnity Payment or Advance (as the case may be) less any reasonable out-of-pocket costs and expenses and Tax incurred by the Indemnified Party in recovering the same.

**5. Conduct of Claims and access to information**

- 5.1 If an Indemnified Party becomes aware of any Claim or Third Party Claim giving rise to an Indemnity Claim (or any circumstances that may reasonably be expected to give rise to an Indemnity Claim) the Indemnified Party shall, subject to any Advance under clause 3.1 having first been paid:
- (A) as soon as reasonably practicable thereafter, notify the Company on a without prejudice basis in writing of the existence of such Indemnity Claim (or circumstances), giving reasonable details in that notification (or, to the extent that such details are not available to the Indemnified Party at that time, as soon as possible thereafter) the circumstances leading to (or expected to lead to), and the grounds for, that Indemnity Claim (for the avoidance of doubt, the failure of an Indemnified Party to notify the Company of an Indemnity Claim (or circumstances) in accordance with this sub-clause shall not prevent such Indemnified Party making an Indemnity Claim in respect of such circumstances);
  - (B) if requested by the Company, take such action and give such information and assistance and access to premises, chattels, documents and records during normal business hours as the Company may reasonably request in order to avoid, dispute, resist, mitigate, settle, compromise, defend or appeal any Claim or judgment or adjudication with respect thereto (including, without limitation, instructing such solicitors or other professional advisers as the Company may nominate to act on the Indemnified Party's behalf) in connection with the Claim;
  - (C) without prejudice to the generality of clause 5.1(B) above, make no admission of liability, agreement, settlement or compromise with any person in relation to such Claim without the prior written consent of the Company, such consent not to be unreasonably withheld or delayed;
  - (D) use all reasonable endeavours to comply with the terms and conditions of any policy of directors' and officers' insurance which covers the Indemnified Party; and
  - (E) take all reasonable action to mitigate any Loss suffered by the Indemnified Party in respect of such Claim,

provided always that no Indemnified Party shall be required to undertake any act or omission where instructed or as required by clause 5.1(E) to do so where such action or omission would, in the reasonable opinion of such Indemnified Party, have a material adverse impact on the goodwill or financial position of the Indemnified Party or its Affiliates or which will require any such party to engage in fraudulent conduct, conduct involving dishonesty or the commission of, or participation in, any criminal offence.

- 5.2 Any information which the Company receives from an Indemnified Party pursuant to this Deed may be provided by the Company to its advisers and insurers without notice to the relevant Indemnified Party provided that such advisers and insurers are subject to a professional obligation of confidentiality to the Company in respect of such information at all material times.
- 5.3 If the Company exercises its rights under clause 5.1(B) the Company agrees to: (i) consult with the Indemnified Party on aspects of the conduct of the Claim materially relevant to the Indemnified Party; (ii) keep the Indemnified Party reasonably informed of relevant developments in relation to conduct of the Claim; and (iii) take into account the Indemnified Party's reasonable requests related to the conduct of the Claim.

## **6. Tax**

- 6.1 Any Indemnity Payment shall be paid by the Company free and clear of all deductions for or on account of Tax, save as required by law.
- 6.2 If any deduction is required by law to be made from any Indemnity Payment or if an Indemnity Payment is subject to a liability to Tax in the hands of the Indemnified Party then the Company shall pay to the Indemnified Party such sum as will, after such deduction has been made or after such liability to Tax has been taken into account, leave the Indemnified Party with the same amount as he would have been entitled to receive had no such deduction been required by law or as he would have been entitled to retain had no such liability to Tax arisen.

## **7. Notices**

A notice to the Company or Naya under this Deed shall only be effective if it is in writing and delivered to:

- (A) in the case of the Company, the secretary of the Company at the registered office, from time to time, of the Company;
- (B) in the case of the Company, the registered office of Cable & Wireless, marked for the attention of the General Counsel, Cable & Wireless, with a copy delivered by email to [belinda.bradberry@cwc.com](mailto:belinda.bradberry@cwc.com) (or such other email address as may be advised by Cable & Wireless from time to time); and
- (C) in the case of Naya, its registered office marked for the attention of General Counsel, with a copy delivered by e mail to [ian@nayafund.com](mailto:ian@nayafund.com) (or such other e mail address as may be advised by Naya from time to time).



**8. Remedies and waivers**

- 8.1 No delay or omission by the Company or any Indemnified Party in exercising any right, power or remedy provided by law or under this Deed shall affect that right, power or remedy or operate as a waiver of such right, power or remedy or constitute an election to affirm the Deed.
- 8.2 The single or partial exercise of any right, power or remedy provided by law or under this Deed shall not unless otherwise expressly stated preclude any other or further exercise of it or the exercise of any other right, power or remedy.
- 8.3 The rights, powers and remedies provided in this Deed are cumulative and not exclusive of any rights, powers and remedies provided by law.

**9. Invalidity**

If at any time any provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that shall not affect or impair:

- (A) the legality, validity or enforceability in that jurisdiction of any other provision of this Deed; or
- (B) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this Deed.

**10. Contracts (Rights of Third Parties Act) 1999**

The terms of this Deed shall be enforceable in accordance with the Contracts (Rights of Third Parties) Act 1999 by any person who is an Indemnified Party but shall not be enforceable, by virtue of the Contracts (Rights of Third Parties) Act 1999, by any other person.

**11. Assignment**

Neither the Indemnified Party nor the Company shall be entitled to assign all or part of the benefit of, or his rights or benefits under, this Deed to any person.

**12. Confidentiality**

- 12.1 Subject to clause 12.2 and clause 12.3, the Company and the Indemnified Party shall treat as confidential and shall not disclose to any person all information that relates to:
- (A) an Indemnity Claim or any matter which results or may result in an Indemnity Claim (including without limitation the existence of an Indemnity Claim); or
- (B) any advance made under clause 3.1,
- (any such information being "Confidential Information").

- 12.2 Notwithstanding the other provisions of this clause 12, the Company and Naya each consent to this Deed being disclosed to the Panel and, to the extent required by the Panel, this Deed being available for inspection as required by rule 26 of the Code.
- 12.3 Notwithstanding the other provisions of this clause 12, the Company or the Indemnified Party may disclose Confidential Information:
- (A) to their professional advisers provided that they procure that such advisers comply with the restrictions contained in this clause as if such advisers were a party to this Deed;
  - (B) if so advised by their legal counsel, accountants or any other professional advisors;
  - (C) to the extent required by applicable law or regulation;
  - (D) to the extent the Confidential Information has come into the public domain through no fault of the Company or the Indemnified Party (as the case may be); or
  - (E) to the extent the Company or the Indemnified Party (as the case may be) has given prior written consent to the disclosure, such consent not to be unreasonably withheld or delayed.

Any Confidential Information to be disclosed by the Company or the Indemnified Party pursuant to clauses 12.3(C) or 12.3(D) above shall be disclosed only after notice to the other.

- 12.4 The restrictions contained in this clause shall continue to apply after termination of this Deed, and, for the avoidance of doubt, after the Indemnified Party ceases to be a shareholder of the Company, without limit in time.

### **13. Choice of Governing Law**

This Deed is to be governed by, and construed in accordance with, English law. Any matter, claim or dispute arising out of or in connection with this Deed, whether contractual or non-contractual, is to be governed by and determined in accordance with English law.

### **14. Jurisdiction**

- 14.1 The courts of England are to have exclusive jurisdiction to settle any dispute, whether contractual or non-contractual, arising out of or in connection with this Agreement. Any proceeding, suit or action arising out of or in connection with this agreement or the negotiation, existence, validity or enforceability of this agreement ("Proceedings") shall be brought only in the courts of England.

- 14.2 Each party waives (and agrees not to raise) any objection, on the ground of forum non conveniens or on any other ground, to the taking of Proceedings in the courts of England. Each party also agrees that a judgment against it in Proceedings brought in England shall be conclusive and binding upon it and may be enforced in any other jurisdiction.
- 14.3 Each party irrevocably submits and agrees to submit to the jurisdiction of the courts of England.

IN WITNESS of which this Deed has been executed and delivered as a deed on the date which first appears on page 1 above.

Executed as a deed by  
Cable & Wireless Limited  
acting by a director in  
the presence of:

) C Underwood  
)  
) Director  
)

Witness's signature:



Name (print):

LEAH PEGG

Occupation:


COMPANY SECRETARIAL ASSISTANT

Address:

65 CHANDOS PLACE, LONDON WC2N 4HT

IN WITNESS of which this Deed has been executed and delivered as a deed on the date which first appears on page 1 above.

Executed as a deed by  
Naya Management LLP  
acting by an authorised signatory in  
the presence of:

)  IAN WYLIE  
)  
) Authorised Signatory  
)

Witness's signature:



Name (print):

HACKETT JAGOBY

Occupation:

PARTNER

Address:

5 BAKER ST, LONDON W1U 7BU